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ABSTRACT

Standard legal methods, statutory developments, case law, and attorney generals' opinions were analyzed in a study of the nine states that received the lowest rankings in J. B. Adams's 1974 investigation of open meeting laws across the United States. In addition, statutory and judicial open meeting activity in the remaining 41 states was surveyed to provide an overview of the field. The nine states examined were: Connecticut, Delaware, Hawaii, Indiana, Maryland, Mississippi, New York, Rhode Island, and West Virginia. The major findings were that (1) all of the nine states have enacted comprehensive open meeting laws since 1974, (2) all 50 states have comprehensive statutory laws requiring open meetings of state and local agencies, and (3) no reported appellate court decision has invalidated any of the major provisions of any state's open meeting statutes. (FL)

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# TOWARD STATE AND LOCAL GOVERNMENT IN THE SUNSHINE

## A 1980 Study of Open Meeting Laws in States That Received Low Scores for Openness in 1974

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# ABSTRACT


TOWARD STATE AND LOCAL GOVERNMENT IN THE SUNSHINE:

A 1980 study of open meeting laws in states
that received low scores for openness in 1974

It has now been six years since the Freedom of Information Foundation published John B.Adams' often-cited study of open meeting laws in all 50 states. That study, which rated such laws on an 11-point scale, assigned the states scores ranging from zero (for states with no such law) to a perfect eleven. Shortly thereafter, several other studies of open meetings were published, including one of case law in the states that earned the highest rankings in Adams' study. However, little has been published about this rapidly developing area of law in the last several years. And in particular, Adams' lowest-rated states--the states where change would seem to be the most needed--have been all but ignored.

This study was intended to fill that gap. Using standard legal methods, statutory developments, case law and attorney generals' opinions were analyzed in the nine states that received the lowest rankings in Adams' survey. Then statutory and judicial open-meeting activity in the remaining 41 states was surveyed generally to provide an overview of the field as of early 1980.

The major findings of this study were these:

1) All nine states that received the lowest ratings in 1974 have since enacted comprehensive open meeting laws, raising their scores dramatically on Adams' scale. Several of these once-reticent states now have open meeting laws that would be ranked among the strongest in the nation.

2) After a decade of frenetic activity in the field, all 50 states now have comprehensive statutory laws requiring open meetings of state and local public agencies.

3) While the courts have occasionally narrowed the scope of state open meeting laws, no reported appellate court decision has invalidated any of the major provisions of any state's open meeting statute.

# INTRODUCTION

When historians of the 21st century look back at the Watergate era and assess its long-range consequences, it seems likely they will say it significantly changed the style of government in America. Latter-day observers may conclude there were few substantive changes in the morality of politics, but they will surely note changes in the trappings. The 1970s witnessed an unprecedented surge of efforts to legislate good political behavior. Those efforts included a variety of financial disclosure and conflict of interest laws, limits on questionable campaign practices, and curbs on secrecy in government.

Of special interest to journalists is the latter category, for it included a major trend toward state and federal laws requiring public access to government records and open meetings of public bodies. During the decade, the federal Freedom of Information Act[1] was substantially strengthened and a federal Government in the Sunshine Act was enacted.[2] And, of course, the federal Privacy Act[3] was approved, setting up a classic example of conflict between the general public's right to know and the individual's right to avoid scrutiny.

On the state level, the trend toward legislating openness and accountability was also pronounced. The 1970s saw a dramatic increase in the number of states having public records and public meeting laws.[4] In fact, when John B. Adams prepared his major study

of state open meeting laws for the Freedom of Information Foundation in 1974[5], he found such rapid change in the law that several states substantially altered their "score" in his ranking system between the completion of his research and the final drafting of his paper.[6] Moreover, that statutory activity was accompanied by a substantial amount of litigation in this area of law, producing a large body of case law by the mid-1970s.[7]

In view of the significant ongoing changes in state open meeting laws noted by Adams and others who conducted their research in the mid-1970s,[8] it seemed appropriate to take a new look at the subject at the decade's end, with a particular emphasis on the states where Adams found few statutory guarantees of public access to public agency meetings. To that end, the instant study was undertaken in early 1980.

## THE ADAMS STUDY

In his 1974 study, Adams employed survey methods to identify state open meeting laws. He sent questionnaires to state legislative reference service offices to secure copies of each state's open meeting laws, reports of case law, and information about pending legislation in the field.[9] Adams identified open-meeting laws in 47 states,[10] and then rated them for eleven characteristics, assigning each state an overall "score" from one to eleven, with scores of zero (in effect) for the three states where he identified no law.

The eleven characteristics Adams analyzed were:

1) Inclusion of a statement of public policy in support of openness;

2) Provision for an open legislature;

3) Provision for open legislative committees;

4) Provision for open meetings of state agencies and bodies;

5) Provision for open meetings of agencies and bodies of the political subdivisions of the state;

6) Provision for open meetings of county boards;

7) Provision for open city councils and their equivalents;

8) A ban on executive (closed) sessions;

9) Provision of specific legal recourse to halt secrecy;

10) Authority for courts to declare actions taken in unlawful secret meetings to be null and void;

11) Provisions for penalties (i.e. criminal sanctions) for those who violate the open meeting law.[11]

Adams found that many states had comprehensive laws; he rated 33 states at a score of six or better on his 11-point scale. However, he also ranked 10 states at a score of four or lower, including three where he identified no open meeting law at all. He noted that the scores might be changing rapidly for some of his low-rated states: he reported that just prior to completion of his paper two of his bottom-10 states had enacted laws that would substantially raise their scores. In particular, he noted that Idaho's score would change from a disappointing four to at least seven as a result of 1974 legislation. And New York, he said, had just passed a law.[12]

## THE 1980 STUDY

For comparison purposes, this study utilized Adams' rankings as a starting point. Since so many states fared well in his 1974 scoring--and since a later study focused on case law in his highest-ranked states[13]--the instant research concentrated on the nine states that received the lowest rankings in 1974. Eliminating Idaho because its 1974 legislation removed it from the bottom tier of Adams' rankings, this study re-examined statutory and case law on open meetings in the nine states with the lowest ratings: Connecticut, Delaware, Hawaii, Indiana, Maryland, Mississippi, New York, Rhode Island, and West Virginia. In addition, a brief review of statutory and case law was conducted in the other 41 states in order to provide a more complete picture of the status of open meeting law after a decade of rapid change.

Standard legal research methods were used, including searches of the National Reporter System, ALR3d[14], the annotated statutes of each state and state-level encyclopedic works where available.[15] Beginning with 1973-74, the evolution of open meeting law in each state was traced, with consultations of session laws where required to develop a complete overview of the emerging pattern. After the law in each state was analyzed, the states that scored the lowest on Adams' scale were rescored on the same scale, based on changes in their open meeting laws by 1979-80. Table I presents Adams' 1974 findings--and the 1980 results--for the nine states on which this study concentrated.

## LIMITATIONS

In his 1974 report, Adams noted two limitations on such a survey of open meeting laws: 1) the law was then in a state of tremendous flux; and 2) open meeting statutes require interpretation.

Today, the state of open meeting laws is somewhat less in transition than in 1974. However, his second caveat is no less relevant today: statutory interpretation is at times difficult even for a state's highest court, and the legal researcher who attempts to do it does so at his peril. As will be noted later, the courts tend to broadly interpret open meeting laws to maximize public access to the democratic process. However, that is not always enlightening when one must interpret ambiguous language; one cannot know whether a given jurisdiction will ultimately resolve statutory ambiguities in favor of or against public access.

To Adams' caveats, several more should be added at this points. For instance, statutory open meeting provisions tend to be widely dispersed in the laws of some states rather than gathered together in one place, and that led some of Adams' respondents to underreport both the breadth and strength of their states' open meeting laws (as noted in reference 15). And since a later Freedom of Information Center study also encountered similar difficulties[16], it is unlikely this research unearthed every statutory and judicial declaration on the subject either. One should view any attempt at scoring open meeting laws on any scale as an inexact business, subject to errors not only of

misinterpretation but also of omission.

Another qualification, of course, is that the common law, custom, local rules of procedure, and attorney generals' opinions have mandated various forms of public access to government meetings beyond those required by statute. In establishing a scoring scale, some of these cannot readily be identified and tabulated. Where statutory interpretations by a court or an attorney general have appeared in the standard annotations, they were taken into consideration and are reflected in the scoring, but there are undoubtedly instances where important components of a state's overall open meeting policy have gone unreported.

And a final qualification should be acknowledged: open meeting laws do not assure open meetings. Almost all open meeting laws provide for executive sessions, and an agency determined to conduct private deliberations in violation of the law can easily do so. Once an executive session is convened for a lawful purpose, how can anyone outside know if the subject matter discussed is strictly limited to the appropriate areas? Moreover, there is really no way to prevent public officials from holding clandestine meetings in violation of open meeting laws, nor is there any way to control what public officials discuss with one another at social gatherings.

In addition, let's suppose three members of a five-person city council are en route to a League of Cities conference. Must they travel in two different cars to avoid creating a quorum of the council? Failing that, must they invite the press and public to squeeze in and ride along to monitor what could become a de facto city council meeting?

It is obvious that no open meeting law can really deal with these kinds of practical problems. There are limits to the effectiveness of laws in mandating openness of government--or any other kind of political morality. Nevertheless, openness in government is surely more likely to occur where there is a strong open meeting law than where there is not. Thus, the goal of seeking strong open meeting laws is clearly a worthwhile one.

## THE RESULTS: AN OVERVIEW

The results of this study should be gratifying to journalists and others who advocate maximum citizen participation in the democratic process. All nine of the states that ranked at the bottom of Adams' rating scale in 1974 have now enacted comprehensive open meeting laws. Thus, all 50 states now have a general open meeting statute applying to both state and local agencies. Most states allow executive sessions for some purposes, but an increasing number have created specific legal recourse over and above the long-established principles of common law and equity for citizens challenging secrecy in government. Many states authorize the courts to invalidate actions taken at unlawful closed meetings, for instance.

Certainly the most dramatic finding of this study, however, is that Adams' lowest-rated states--states whose scores on the 11-point scale ranged from zero to four points in 1974--all now qualify for scores of at least eight on the same scale. Seven of the nine states now score nine points or more! Admittedly,

SUMMARY OF OPEN MEETING LAWS IN ADAMS' 9 LOWEST-RATED STATES, 1974 AND 1980

| STATE | Includes public policy statement | Open legislature | Open Legis. Committees | Open state agencies | Open county local agencies | Open county boards | Open city councils | Forbids exec. sessions | Legal Recourse to halt secrecy | Actions in violation voidable | Provides penalties for violations | SCORE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| CONNECTICUT | | | | | | | | | | | | |
| Adams/74 | | | | yes | yes | yes | yes | | | | | 4 |
| 1980 | | yes/C | yes | yes | yes | yes | yes | | yes | yes | yes | 9 |
| DELAWARE | | | | | | | | | | | | |
| Adams/74 | | | | yes | yes | yes | yes | | | | | 4 |
| 1980 | yes | yes/C | yes | yes | yes | yes | yes | | yes | yes | | 9 |
| HAWAII | | | | | | | | | | | | |
| Adams/74 | | | | yes | yes | yes | yes | | | | | 4 |
| 1980 | yes | | yes/D | yes | yes | yes | yes | | A | yes | yes | 8 |
| INDIANA | | | | | | | | | | | | |
| Adams/74 | yes | | | yes | yes | | | | | | yes | 4 |
| 1980 | yes | yes/C | yes | yes | yes | yes | yes | | yes | yes | | 9 |
| MARYLAND | | | | | | | | | | | | |
| Adams/74 | | | | yes | | | | | | | | 1 |
| 1980 | yes | yes/C | yes | yes | yes | yes | yes | | yes | yes | B | 9 |
| MISSISSIPPI | | | | | | | | | | | | |
| Adams/74 | | | | | | | | | | | | 0 (no law) |
| 1980 | yes | yes/C | yes | yes | yes | yes | yes | | yes | | | 8 |
| NEW YORK | | | | | | | | | | | | |
| Adams/74 | | | | | | | | | | | | 0 (no law) |
| 1980 | yes | yes/C | yes | yes | yes | yes | yes | | yes | yes | | 9 |
| RHODE ISLAND | | | | | | | | | | | | |
| Adams/74 | | | | yes | | | | | | | | 1 |
| 1980 | yes | yes | yes | yes | yes | yes | yes | | yes | yes | | 9 |
| WEST VIRGINIA | | | | | | | | | | | | |
| Adams/74 | | | | | | | | | | | | 0 (no law) |
| 1980 | yes | yes | yes | yes | yes | yes | yes | | yes | yes | yes | 10 |

Notes: A - attorney general to enforce, no private rights specified; B - penalties in St. Mary's County only; C - Constitutional provision for open legislature; D - under another statute

some states actually had more statutory open meeting provisions than Adams' respondents reported in 1974, and those states received undeservedly low scores as a result (where this occurred, it will be explained more fully in the state-by-state report of results). However, even those states have enacted much tougher open meeting laws during the intervening years.

All nine of the formerly low-rated states now have laws that cover all of the major agencies of state and local government, and all nine have enforcement provisions within the open-meeting statutes. Eight of the nine states' comprehensive open meeting laws authorize private citizens to sue to open unlawfully closed meetings, usually without showing that they were injured specially by the alleged government secrecy. And eight of the nine states now have statutes authorizing the courts to invalidate actions taken by public agencies in violation of the open meeting requirements.

Moreover, this study identified not one reported decision in which an appellate court had invalidated any major provision of an open meeting law--in these nine states or elsewhere. There have been instances when courts held that an open meeting law did not apply to a particular government agency[17] or that a particular subject area of government business fell within the categories of authorized exceptions[18], but in no case was there a general ruling adverse to an open meeting law. Courts in several states have ruled that quasi-judicial proceedings need not be open to the public[19], and the attorney-client privilege has been upheld in the face of public requests for access to meetings where litigation was discussed.[20] For the most part, however,

the courts have obeyed the statements of public policy contained in most open meeting laws, deciding close questions in favor of public access and construing statutory language to afford as much openness in government as possible.[21]

In the nine states that are the focus of this study, no statute forbids executive sessions outright, and only three of the nine states provide criminal penalties for those who violate the open meeting laws. In fact one state (Indiana) has abolished criminal penalties that existed in an earlier open-meeting statute, although those penalties remain in force for violations of a companion open-record law. And another state (Maryland) has now enacted statutory penalties for taking part in an unlawful secret meeting in one county but nowhere else in the state! These unusual provisions will be detailed later in the state-by-state discussion.

Despite these aberrations, the nine states that were at the bottom of Adams' list in 1974 would now rank much higher on any rating scale. The improvement in statutory open meeting safeguards in these states has been truly dramatic in the years since 1974.

## THE RESULTS: CONNECTICUT

Connecticut offers a notable example of statutory protection for open meetings today, in sharp contrast to the situation there in 1974. Given a rating of four on Adams' scale, the state now qualifies for a rating of nine, but its laws appear to be even better than the nine rating would suggest. Connecticut may have the toughest open meeting law

among the nine states that are the focus of this study. The Connecticut law, shown in Appendix I, applies to all branches and levels of state and local government, provides strong legal recourse, and is one of only three state laws among the nine to provide general criminal penalties for violators.

The new law, appearing in sections 1-18 to 1-21 of the Connecticut General Statutes, was enacted in 1975 and strengthened several times since. Perhaps the most interesting and unusual feature of the Connecticut law is the establishment of a permanent agency of state government to safeguard the public's right to attend meetings (and examine records) of government agencies. Named the "Freedom of Information Commission,"[22] it is a five-member body. Commissioners are appointed by the governor and are provided a staff and subpoena power to investigate alleged violations. The commission is empowered to invalidate actions of government agencies taken at unlawful secret meetings and to impose fines on government officials who participate in such secret meetings. Decisions of the FoI Commission may be appealed to the state courts either by government officials or private individuals.

Another duty of the Connecticut FoI Commission is to conduct training sessions for public officials at least annually to assure that they understand their responsibilities under the open meetings (and public records) statutes.

Connecticut's open meetings law does authorize executive sessions, but they are more limited in scope than is true in many states. Executive sessions are permitted only for:

1) personnel matters (unless the individual involved requests that the discussion be public);

2) discussions of pending litigation;

3) security matters;

4) discussions of real estate transactions where public disclosure might increase the price;

5) discussions of public records that are confidential to protect individual privacy.[23]

In scoring Connecticut's open meeting law, credit was given for coverage of the state legislature itself, although the provision requiring the state's General Assembly to hold open meetings actually appears in Article III, Section 16 of the state Constitution. This is in keeping with the scoring procedure used by Adams.[24]

## DELAWARE

In 1974 Delware had an open meeting law that applied to both state and local government agencies,[25] but it was a notably weak law. The old Delaware statute appears in Appendix II-A. It provided no sanctions whatever for violations and granted a blanket authorization for executive sessions with discussions permitted on any subject--as long as no business was transacted.

The new Delaware law,[26] enacted in 1976, is vastly stronger. It appears in Appendix II-B. It includes a statement of public policy, definitions of terms, and limitations on the subject matter of executive sessions (although executive sessions are permitted for far more purposes than would be desired). The new statute includes enforcement provisions, empowering the courts to invalidate government actions taken in secret on the petition of any citizen.

Perhaps the greatest shortcoming of the new Delaware statute is its broad provisions for executive sessions, as just noted. Among the more objectionable loopholes is an authorization for school boards to discuss attendance boundaries and budgets behind closed doors! These are matters in which there is substantial public interest, particularly in an era of increasing judicial pressure for school systems to eliminate de facto racial segregation based on housing patterns. Few states allow executive sessions for discussions of public issues such as school attendance boundaries, but Delaware does.

Delaware's nine-point score includes credit for a state Constitutional provision requiring the legislature to conduct open sessions "unless when the business is such as ought to be kept secret."[27]

## HAWAII

In comparison to the laws in a number of other states, Hawaii's open meeting statute that was in effect in 1974[28] would not be considered a weak law. It appears in Appendix III-A. It applied to both state and local agencies and included a full set of appropriate legal definitions. However, it lacked a statement of public policy, its authorization for executive sessions was broad, and there were neither penalties nor remedies prescribed in the statute. As a result, the state received a score of only four in Adams' study.

The new law,[29] enacted in 1975, is much stronger in these

respects and qualifies Hawaii for a score of eight. It appears in Appendix III-B. The noteworthy additions are a statement of public policy, a narrow definition of subject matter that may be discussed in an executive session, specific remedies (though the state attorney general's office is charged with enforcement with no right of citizens to bring suits stated), and criminal sanctions for violators. Actions taken at improper secret meetings may be voided by court action.

Executive sessions are permitted for personnel matters, employee labor negotiations, consultations with attorneys, investigations of criminal misconduct and matters of public safety and security. An attorney general's opinion has ruled that the personnel exception is limited to discussions involving a specific individual.[30]

Hawaii has a particularly strong penalty for open meeting violators: wilful violators are guilty of a misdemeanor and may be summarily removed from office upon conviction under many circumstances.

The open meeting law specifically exempts the legislature itself, leaving the regulation of access to its proceedings to that body's own rules. However, under another section of Hawaii's statutory laws, many legislative committees must hold open meetings.[31]

## INDIANA

Indiana is in some ways unique among the nine states included in this study. The state has had a comprehensive open meeting

law[32] since 1953. That law appears in Appendix IV-A. A reading of the 1953 statute and all reported interpretations reveals no apparent reason for the low score (four points) the state was assigned in Adams' study.The Indiana law in force in 1973-74 had a strong statement of public policy, broadly covered agencies of state and local government in language similar to that in laws given much higher ratings , and it provided criminal penalties as well as provisions for legal recourse by citizens that could lead to invalidating actions taken in secret meetings. A reanaly is of Indiana law as it existed in 1973-74 indicates the appropri e score would be nine rather than four points, counting a Constitutional provision requiring the legislature itself to hold open meetings.[33]

Nevertheless, Indiana, like the other states in this study, has strengthened its law since 1974. In 1977, the legislature enacted The Indiana Open Door Law,[34] which supplemented and in some ways superseded the earlier law. The Open Door Law appears in Appendix IV-B. It differs from the earlier law in several principal respects:

1) It includes broader definitions of terms and a re-written statement of public policy;

2) It forbids secret ballot voting by public bodies;

3) It spells out the requirements for notice of public meetings;

4) It limits the subject matter of executive sessions to eight categories;

5) It has special rules for employee labor negotiations

that authorize all parties to make public statements and require factfinding hearings to be open to the public;

6) It strengthens the provisions for citizens to seek remedies for violations and provides for the payment of attorney's fees by the prevailing party under certain circumstances when government secrecy is challenged in court;

7) It eliminates the criminal sanctions possible under the old law for open meeting violations (while the old sanctions remain in force for public records violations).

Aside from the elimination of the former criminal penalties for violations, Indiana has an excellent open meeting law today. It is one of only a few such statutes requiring public agencies to pay a complainant's litigation costs where the agency is found to have knowingly and intentionally held unlawful secret meetings.

Nevertheless, its scope of coverage would appear to differ little from that under the old law; the state's score remains at nine, the score to which the state was apparently entitled in 1974.

## MARYLAND

Maryland is another state where the 1974 study produced an undeservedly low score. Adams said Maryland had only "sketchy laws covering only state administrative agencies" and gave the state one point out of eleven.[35] Apparently the Maryland respondent was aware of only one of the state's several provisions requiring open meetings of various government agencies. As well

as the state agency law, there was also a separate law requiring open meetings by counties[36] and municipal governments.[37] Counting Maryland's Constitutional requirement for open meetings of the legislature,[38] the state's actual score in 1974 was at least four points rather than one. The three statutes just cited appear in Appendix V-A.

Taken as a group, those nearly identical laws require open meetings by a wide variety of government agencies, but they lack any statement of public policy or sanctions for violations. They also permit executive sessions without any limitations on subject matter. Nor are there any specific provisions for legal recourse.

All of this was remedied in 1976 and 1977, when the legislature enacted a pair of comprehensive new open meeting laws.[39] An interesting subject for further research would be the question of why Maryland enacted one comprehensive open meeting law applying only to a single sparsely populated county in 1976, and then passed a separate slightly different law a year later covering the rest of the state. The state's unusual legislative history of open meeting laws is mentioned in Keefe,[40] but that report offers no explanation for the separate St. Mary's County law. That law contains criminal sanctions for violators but lacks provisions for judicial invalidation of actions taken at unlawful secret meetings. The comprehensive statewide law has just the opposite provisions: it lacks criminal sanctions but allows judicial invalidation of unlawful actions. Both laws appear in Appendix V-B.

Aside from the special treatment of one small county, the Maryland statutes differ little from a number of the others included in this study. The state qualifies for a score of nine today, counting the Constitutional provision for open meetings of the legislature.

That is a dramatic improvement from the score of four the state merited in 1974, or the one-point score it received.

The Maryland law includes a strong statement of public policy, definitions of terms, and limitations on the subject matter of executive sessions--although that limitation allows closed meetings for many kinds of business. In fact, a board may by a two-thirds vote override all limits on executive sessions and discuss any other subject in a closed session if there is "some other exceptional reason so compelling as to override the general public policy in favor of open meetings."[41]

The Maryland statute, like the Indiana one, provides for a public agency to pay a complaining party's litigation costs if the suit is successful--or for the complainant to pay the agency's costs if the agency prevails. However, in Indiana the citizen-complainant may only be required to pay the agency's costs if the action is found to be "frivolous and vexatious"; in Maryland there is no such limitation.

There has been one Maryland court decision worth special mention, Urbana Civic Assn. v. Frederick County Board of County Commissioners, 325 A2d 755 (1974). Interpreting the pre-1977 statute requiring county boards to hold open meetings, a court concluded that the statute was "directory" rather than "mandatory," which enabled the court to avoid invalidating an action taken at a closed meeting. Under the new law, the courts are specifically authorized to invalidate actions taken at improper closed meetings.

## MISSISSIPPI

Mississippi is one of the states that received no score

in the 1974 study, since the state had no open meeting law at the time. That deficiency was remedied in 1975, when the state legislature enacted a comprehensive statute[42] which appears in Appendix VI. Combining the new statute with a provision of the Mississippi Constitution that has required open meetings of the legislature since 1817,[43] Mississippi now qualifies for a score of eight. Mississippi was one of the last states to legislate open meetings and it still has a relatively weak statute.

The statute applies generally to agencies of state and local government, but it is very permissive in allowing executive sessions. All that is required is a three-fifths vote of any public body to close the meeting, with no limitation on the subject matter that may be discussed--or acted upon--behind closed doors. The statute does require the agency to meet publicly and conduct a new vote before going into executive session on each meeting day, but the restrictions beyond that are minimal.

Another deficiency of the Mississippi law is that it lacks strong remedies. Any citizen is authorized to bring an equitable action for an injunction or writ of mandamus to half improper government secrecy, but there are no penalties for violations and no provisions authorizing the courts to invalidate actions taken in improper executive sessions.

Moreover, it would seem that any judicial inquiry into an alleged violation of the act would be limited to the procedural question of whether the public entity properly conducted its vote and secured a three-fifths majority before closing the doors. There is no place for a substantive inquiry into the propriety of any particular closed session since there are no restrictions on the kind of business that may be discussed behind closed doors.

Final actions--and all the preliminary discussion--may occur in private if three-fifths of a public board so wishes, in effect returning to government in secret.

Obviously, an open meeting law written thus offers little protection when a public agency chooses to systematically exclude the public. An interesting subject for further study would be the extent to which this open meeting law has in fact forced public agencies to meet in public. It would be useful to know whether there is significantly more secrecy in government in Mississippi under this law than there is in, say, Connecticut, where there is not only a very strong open meeting law with narrowly defined categories of executive sessions but also a special state agency charged with enforcing the law.

Another obvious question the Mississippi law raises is the validity of the scoring system itself. As Adams noted,[44] two statutes may earn the same score while having very substantial differences in actual effectiveness in combatting government secrecy. Mississippi qualifies for the same score as Hawaii, but any objective analysis would indicate that Hawaii's law is much stronger because that law is much more tightly drawn to limit abuses of the executive session prerogative. And Connecticut's very strong law scores only one point more on Adams' scale, since it lacks a statement of public policy--something that would be desirable but hardly necessary since there are stringent anti-secrecy provisions whose public policy objectives could hardly go unnoticed by a court.

Nevertheless, Mississippi does now have an open meeting

law, and that should be viewed as a substantial improvement. At least public officials must vote in favor of secrecy--and do so on the record--before they can conduct the public's business in private.

## New York

Like Maryland, New York is a state whose open meeting laws were underreported in 1974. Adams indicated that the state had no laws requiring open meetings, but appended a footnote indicating an open meeting law was enacted May 29, 1974.[45]

Neither item is correct. Like Maryland, New York had provisions for open meetings scattered among the procedural laws for certain agencies.[46] And like Maryland, New York had a Constitutional requirement for open meetings of the state legislature.[47] Further, as explained in reference 12, New York did not pass an open meeting law in 1974; what was approved on May 29, 1974 was a Freedom of Information Law that applies only to public records and not to public meetings.[48] The state did not enact its comprehensive Open Meeting Law until 1976.[49]

However, that 1976 law represents a dramatic improvement over the scattered, fragmentary and weak provisions in force in 1974. The Open Meeting Law appears in Appendix VII. It covers state and local agencies, has a statement of public policy, and has enforcement provisions.

The statute allows executive sessions for a few commonly cited reasons such as labor negotiations, law enforcement and public safety activities, discussions regarding litigation, land acquisition discussions, etc.

There are no criminal sanctions for violations, but any citizen may sue the offending agency, and the courts are authorized to invalidate actions taken at unlawful secret meetings under most circumstances. The statute contains provisions for the prevailing party to pay the other side's litigation costs (including attorney's fees) under circumstances similar to those in Maryland (see page 17). New York's 1980 score is nine on Adams' scale.

In the few years since the enactment of New York's comprehensive statute, there have been several court decisions interpreting it. One court ruled that when a city council meets at a designated time and place and conducts public business, the event is indeed a meeting subject to the open meeting law (Orange County Publications v. Council of the City of Newburgh, 383 NE2d 1157). In another case, a court held that a work session of a school board where consolidating high schools was discussed amounted to a meeting and should have been public (Binghamton Press Co. v. Board of Education, 412 NYS2d 492). However, a third court ruled that committees of a board of education could meet in private and make recommendations to the board without violating the open meeting law (Daily Gazette Co. v. North Colonie Board of Education, 412 NYS2d 494).

## Rhode Island

Rhode Island received a score of one point in 1974, based on a law covering state agencies.[50] There was also a law in force requiring open meetings by school committees (i.e. school boards)[51] and the state added a comprehensive open meeting law in 1976, amending it to strengthen the enforcement provisions two years later.[52] The new law appears in Appendix VIII.

Like most open meeting laws, it contains a statement of public policy and definitions of terms. Executive sessions are permitted for many of the typical reasons, but only by a majority vote of the membership after a specific announcement of which exception authorizes the particular executive session. However, the law also allows informal meetings and electronic communication among members of public agencies, though such contacts are not to be used "to circumvent the spirit or requirements" of the open meeting law.[53] There are no criminal penalties, but any citizen is authorized to bring legal action against an agency that violates the open meeting law. Courts are authorized to invalidate actions taken at unlawful secret meetings.

The new law gives Rhode Island a score of nine at this writing.

## West Virginia

The state whose open meeting score has changed the most dramatically since 1974 is West Virginia. At that point, the state had neither an open meeting law nor a constitutional provision specifically requiring even the legislature to hold open sessions.

The new law,[54] which appears in Appendix IX, is one of the most comprehensive in this study. It scores an unusually high ten points on Adams' scale of eleven. It was enacted in 1975 and strengthened in 1978.

It includes a statement of public policy, definitions of terms, and enforcement provisions--including criminal sanctions for violators and authority for courts to invalidate unlawful secret actions by public agencies. Any citizen may bring an action challenging government secrecy.

The West Virginia law allows executive sessions, but only after the presiding officer identifies the specific authorization and the members of the public entity approve by majority vote. Closed sessions are permitted for all of the matters commonly cited: law enforcement and security matters, personnel matters, litigation, property acquisition, etc.

## CONCLUDING OBSERVATIONS

In this study, it was found that all of the states rated lowest for their open meeting laws in 1974 have dramatically strengthened their laws in the years since. And all 50 states now have comprehensive meeting laws, with some of the strongest in states that had weak laws--or no laws--as of 1974.

There has been considerable litigation in the open meeting field as well in recent years, but in no case has an appellate court of record invalidated any major portion of a state open meeting law. Instead, the litigation has focused on questions of the applicability of these laws to borderline agencies and borderline subject areas, with mixed results in terms of public access. While the courts have sometimes held that agencies on the periphery of public governance were not covered by open meeting laws--and that some kinds of subject matter such as pending litigation and quasi-judicial inquiries may justify closed meetings--the general trend has been for courts to liberally construe open meeting laws.

The statutory activity since Adams' 1974 study has dramatically

increased public access rights in the states with low ratings, especially by limiting the scope of executive sessions, applying the laws to additional public agencies, and creating new legal remedies for citizens denied access to public meetings. The common law and equitable rights citizens have always had when public officials ignored their legal duties remain viable, of course, but most state meeting laws now provide additional remedies for government secrecy.

## SUGGESTIONS FOR FURTHER RESEARCH

Several of the findings of this study suggest fertile areas for additional research. In the sections discussing the specific states, it was noted that Maryland's legislative history in the open meeting area appeared to be an unusual one meriting further investigation. Likewise, the Mississippi law's broad authorization for government agencies to take final actions in secret suggests the need for an investigation of the extent to which Mississippi governments have taken advantage of this substantial loophole. And in Connecticut, an interesting study of the scope and effectiveness of the Freedom of Information Commission's work suggests itself.

Moreover, since this study revealed substantial legislative activity in the open meeting area during the late 1970s, a new comprehensive analysis of open meeting statutes (and their interpretations) in all 50 states would provide valuable information.

If there has been substantial change in the nine states analyzed here, the changes are equally important--if less-dramatic--in the other 41 states.

Both legal and survey methods could be used in such a national study: the legal method to determine what the various statutes and reported cases actually say, and survey methods to determine how journalists, public officials and perhaps others have responded to the dramatic changes in open meeting laws of the last decade.

APPENDIX I - Connecticut General Statutes 1-18 through 1-21
Effective 1979-80 in this form

**§ 1-18a. Definitions**

As used in this chapter, the following words and phrases shall have the following meanings, except where such terms are used in a context which clearly indicates the contrary:

(a) "Public agency" or "agency" means any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, and also includes any judicial office, official or body but only in respect to its or their administrative functions.

(b) "Meeting" means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multi-member public agency, and any communication by or to a quorum of a multi-member public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power. "Meeting" shall not include: any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business; strategy or negotiations with respect to collective bargaining; a caucus of members of a single political party notwithstanding that such members also constitute a quorum of a public agency; an administrative or staff meeting of a single-member public agency; and communication limited to notice of meetings of any public agency or the agendas thereof. "Caucus" means a convening or assembly of the enrolled members of a single political party who are members of a public agency within the state or a political subdivision.

(c) "Person" means natural person, partnership, corporation, association or society.

(d) "Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

(e) "Executive sessions" means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (1) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting; (2) strategy and negotiations with respect to pending claims and litigation to which the public agency or a member thereof, because of his conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled; (3) matters concerning security strategy or the deployment of security personnel, or devices affecting public security; (4) discussion of the selection of a site or the lease, sale or purchase of real estate by a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would cause a likelihood of increased price until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; and (5) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-19.

Note: sec. 1-19 deals with public records; 1-20 has been repealed; it dealt with other matters.

**§ 1-21. Meetings of government agencies to be public. Recording of votes. Schedule and agenda of meetings to be filed. Notice of special meetings. Executive sessions**

The meetings of all public agencies, except executive sessions as defined in subsection (e) of section 1-18a, shall be open to the public. The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours, excluding any Saturday, Sunday or legal holiday, and shall also be recorded in the minutes of the session at which taken, which minutes shall be available for public inspection within seven days of the session to which they refer. Each such public agency of the state shall file not later than January thirty-first of each year in the office of the secretary of the state the schedule of the regular meetings of such public agency for the ensuing year, except that such provision shall not apply to the general assembly, either house thereof or to any committee thereof. Any other provision of sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, notwithstanding, the general assembly at the commencement of each regular session in the odd numbered years, shall adopt, as part of its joint rules, rules to provide notice to the public of its regular, special, emergency or interim committee meetings. The chairman and secretary of any such public agency of any political subdivision of the state shall file, not later than January thirty-first of each year, with the clerk of such subdivision the schedule of regular meetings of such public agency for the ensuing year, and no such meeting of any such public agency shall be held sooner than thirty days after such schedule has been filed. The agenda of the regular meetings of every public agency, except for the general assembly, shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer, in such agency's regular office or place of business or, if there is no such office or place of business, in the office of the secretary of the state for any such public agency of the state or in the office of the clerk of such subdivision for any public agency of a political subdivision of the state. Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings. Notice of each special meeting of every public agency, except for the general assembly, either house thereof or any committee thereof, shall be given not less than twenty-four hours prior to the time of such meeting by posting a notice of the time and place thereof in the office of the secretary of the state for any such public agency of the state, and in the office of the clerk of such subdivision for any public agency of a political subdivision of the state; provided, in case of emergency, except for the general assembly, either house thereof or any committee thereof, any such special meeting may be held without complying with the foregoing requirement for the posting of notice but a copy of the minutes of every such emergency special meeting adequately setting forth the nature of the emergency and the proceedings occurring at such meeting shall be filed with the secretary of the state or the clerk of such political subdivision, as the case may be, not later than seventy-two hours following the holding of such meeting. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by such public agency. In addition, such written notice shall be delivered to the usual place of abode of each member of the public agency so that the same is received prior to such special meeting. The requirement of delivery of such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the public agency a written waiver of delivery of such notice. Such waiver may be given by telegram. The requirement of delivery of such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Nothing in this section shall be construed to prohibit any agency from adopting more stringent notice requirements. No member of the public shall be required, as a condition to attendance at a meeting of any such body, to register his name, or furnish other information, or complete a questionnaire or otherwise fulfill any condition precedent to his attendance, except as provided in section 2-45. A public agency may hold an executive session as defined in subsection (e) of section 1-18a, upon an affirmative vote of two-thirds of the members of such body present and voting, taken at a public meeting and stating the reasons for such executive session, as defined in said section.

**§ 1-21a. Recording, broadcasting or photographing meetings**

(a) At any meeting of a public agency which is open to the public, pursuant to the provisions of section 1-21, proceedings of such public agency may be recorded, photographed, broadcast or recorded for broadcast, subject to such rules as such public agency may have prescribed prior to such meeting, by any person or by any newspaper, radio broadcasting company or television broadcasting company. Any recording, radio, television or photographic equipment may be so located within the meeting room as to permit the recording, broadcasting either by radio, or by television, or by both, or the photographing of the proceedings of such public agency. The photographer or broadcaster and its personnel, or the person recording the proceedings, shall be required to handle the photographing, broadcast or recording as inconspicuously as possible and in such manner as not to disturb the proceedings of the public agency. As used herein the term television shall include the transmission of visual and audible signals by cable.

(b) Any such public agency may adopt rules governing such recording, photography or the use of such broadcasting equipment for radio and television stations but, in the absence of the adoption of such rules and regulations by such public agency prior to the meeting, such recording, photography or the use of such radio and television equipment shall be permitted as provided in subsection (a).

(c) Whenever there is a violation or the probability of a violation of subsections (a) and (b) of this section the superior court, or a judge thereof, for the judicial district in which such meeting is taking place shall, upon application made by affidavit that such violation is taking place or that there is reasonable probability that such violation will take place, issue a temporary injunction against any such violation without notice to the adverse party to show cause why such injunction should not be granted and without the plaintiff's giving bond. Any person or public agency so enjoined may immediately appear and be heard by the court or judge granting such injunction with regard to dissolving or modifying the same and, after hearing the parties and upon a determination that such meeting should not be open to the public, said court or judge may dissolve or modify the injunction. Any action taken by a judge upon any such application shall be immediately certified to the court to which such proceedings are returnable.

Note: sec. 1-21b pertains to smoking at meetings, etc.

**§ 1-21c. Mailing of notice of meetings to persons filing written request**

The public agency shall, where practicable, give notice by mail of each regular meeting, and of any special meeting which is called, at least one week prior to the date set for the meeting, to any person who has filed a written request for such notice with such body, except that such body may give such notice as it deems practical of special meetings called less than seven days prior to the date set for the meeting. Such notice requirement shall not apply to the general assembly, either house thereof or to any committee thereof. Any request for notice filed pursuant to this section shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for notice shall be filed within thirty days after January first of each year. Such public agency may establish a reasonable charge for sending such notice based on the estimated cost of providing such service.

§ 1-21d. Adjournment of meetings. Notice

The public agency may adjourn any regular or special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular meeting the clerk or the secretary of such body may declare the meeting adjourned to a stated time and place and shall cause a written notice of the adjournment to be given in the same manner as provided in section 1-21, for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular or special meeting was held, within twenty-four hours after the time of the adjournment. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings, by ordinance, resolution, by law or other rule.

§ 1-21e. Continued hearings. Notice

Any hearing being held, or noticed or ordered to be held, by the public agency at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of such agency in the same manner and to the same extent set forth in section 1-21d, for the adjournment of meeting, provided, that if the hearing is continued to a time less than twenty-four hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted on or near the door of the place where the hearing was held immediately following the meeting at which the order or declaration of continuance was adopted or made.

§ 1-21f. Regular meetings to be held pursuant to regulation, ordinance or resolution

The public agency shall provide by regulation, in the case of a state agency, or by ordinance or resolution in the case of an agency of a political subdivision, the place for holding its regular meetings. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day. If it shall be unsafe to meet in the place designated, the meetings may be held at such place as is designated by the presiding officer of the public agency; provided a copy of the minutes of any such meeting adequately setting forth the nature of the emergency and the proceedings occurring at such meeting shall be filed with the secretary of the state or the clerk of the political subdivision, as the case may be, not later than seventy-two hours following the holding of such meeting.

§ 1-21g. Executive sessions

At an executive session of a public agency, attendance shall be limited to members of said body and persons invited by said body to present testimony or opinion pertinent to matters before said body provided that such persons' attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion and, provided further, that the minutes of such executive session shall disclose all persons who are in attendance.

§ 1-21h. Conduct of meetings

In the event that any meeting of a public agency is interrupted by any person or group of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are wilfully interrupting the meetings, the members of the agency conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Duly accredited representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit such public agency from establishing a procedure for readmitting an individual or individuals not responsible for wilfully disturbing the meeting.

§ 1-21i. Denial of access of public records or meetings. Notice. Appeals

(a) Any denial of the right to inspect or copy records provided for under section 1-19 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request. Failure to comply with a request to so inspect or copy such public record within such four business day period shall be deemed to be a denial.

(b) Any person denied the right to inspect or copy records under section 1-19 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, may appeal therefrom, within thirty days, to the freedom of information commission, by filing a notice of appeal with said commission. Upon receipt of such notice, the commission shall forthwith serve upon all parties, by certified or registered mail, a copy of such notice together with any other notice or order of such commission. Said commission shall, within twenty days after receipt of the notice of appeal, hear such appeal after due notice to the parties and shall decide the appeal within thirty days after such hearing, by confirming the action of the agency or ordering the agency to comply forthwith with such relief as the commission, in its sound discretion, believes appropriate to rectify the denial of any right conferred by said sections. Such order may declare any or all actions taken at any meeting to which such person was denied the right to attend null and void and may require the production or copying of any public record.

(c) Any person who does not receive proper notice of any meeting of a public agency in accordance with the provisions of sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, may appeal under the provisions of subsection (b) of this section. A public agency of the state shall be presumed to have given timely and proper notice of any meeting as provided for in said sections if notice is given in the Connecticut Law Journal or a Legislative Bulletin. A public agency of a political subdivision shall be presumed to have given proper notice of any meeting, if a notice is timely sent under the provisions of said sections by first-class mail to the address indicated in the request of the person requesting the same. If such commission, determines that notice was improper, it may, in its sound discretion, declare any or all actions taken at such meeting null and void.

(d) Any party aggrieved by the decision of said commission may appeal therefrom, in accordance with the provisions of section 4-183. Notwithstanding the provisions of section 3-125, legal counsel employed or retained by said commission shall represent said commission in all such appeals and in any other litigation affecting said commission. Such appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by or on behalf of the state, including informations on the relation of private individuals. Nothing in this section shall deprive any party of any rights he may have had at common law prior to January 1, 1958. The court, or the freedom of information commission, if it finds that the denial of any right created by sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, was wilful and that there was no reasonable ground for such denial, shall fine the custodian or other official directly responsible for such denial not less than twenty nor more than five hundred dollars.

§ 1-21j. [Freedom of information commission. Appointment. Powers and duties. Training sessions. Vacancies. Employees. Reports of decisions, opinions, etc.]

(a) There shall be a freedom of information commission consisting of five members appointed by the governor, with the advice and consent of either house of the general assembly, who shall serve for terms of four years from the July first of the year of their appointment, except that of the members appointed prior to and serving on July 1, 1977, one shall serve for a period of six years from July 1, 1975, one shall serve for a period of four years from July 1, 1975, and one shall serve for a period of six years from July 1, 1977. Of the two new members first appointed after July 1, 1977, one shall serve from the date of such appointment until June 30, 1980, and one shall serve from the date of such appointment until June 30, 1982. No more than three members shall be members of the same political party. Said commission shall be an autonomous body within the office of the secretary of the state for administrative purposes only.

(b) Each member shall receive fifty dollars per day for each day such member is present at a commission hearing or meeting, and shall be entitled to reimbursement for actual and necessary expenses incurred in connection therewith, in accordance with the provisions of section 4-1.

(c) The governor shall select one of its members as a chairman. The commission shall maintain a permanent office at Hartford in such suitable space as the commissioner of administrative services provides; the secretary of the state shall provide such secretarial assistance as is needed. All papers required to be filed with the commission shall be delivered to such office.

(d) The commission shall, subject to the provisions of sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, promptly review the alleged violation of said sections and issue an order pertaining to the same. Said commission shall have the power to investigate all alleged violations of said sections and may for the purpose of investigating any violation hold a hearing, administer oaths, examine witnesses, receive oral and documentary evidence, have the power to subpoena witnesses under procedural rules adopted by the commission to compel attendance and to require the production for examination of any books and papers which the commission deems relevant in any matter under investigation or in question. In case of a refusal to comply with any such subpoena or to testify with respect to any matter upon which that person may be lawfully interrogated, the superior court for the judicial district of Hartford-New Britain, on application of the commission, may issue an order requiring such person to comply with such subpoena and to testify; failure to obey any such order of the court may be punished by the court as a contempt thereof.

(e) The freedom of information commission shall conduct training sessions, at least annually, for members of public agencies for the purpose of educating such members as to the requirements of sections 1-7 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive.

(f) When the general assembly is in session, the governor shall have the authority to fill any vacancy on the commission, with the advice and consent of either house of the general assembly. When the general assembly is not in session any vacancy shall be filled pursuant to the provisions of section 4-19. A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission and three members of the commission shall constitute a quorum.

(g) The commission shall, subject to the provisions of chapter 67, employ such employees as may be necessary to carry out the provisions of chapter 3.1 The commission may enter into such contractual agreements as may be necessary for the discharge of its duties, within the limits of its appropriated funds and in accordance with established procedures.

(h) The commission shall make available to the public the printed reports of its decisions, opinions and related materials at a reasonable cost not to exceed the actual cost thereof to said commission.

(i) The freedom of information commission shall not be construed to be a commission or board within the meaning of section 4-9a.

**§ 1-21k. Penalties**

(a) Any person who wilfully, knowingly and with intent to do so, destroys, mutilates or otherwise disposes of any public record without the approval required under section 1-18 or unless pursuant to chapter 47, or who alters any public record, shall be guilty of a class A misdemeanor and each such occurrence shall constitute a separate offense.

(b) Any member of any public agency who fails to comply with an order of the freedom of information commission shall be guilty of a class B misdemeanor and each occurrence of failure to comply with such order shall constitute a separate offense.

APPENDIX II-A - Delaware Code Title 29, sec. 5109
Effective until 1977

§ 5109. Meetings of State boards and commissions; executive sessions

The meetings of all boards and commissions of the State of Delaware or any political subdivision thereof at which any business is transacted shall be open to the public and to representatives of the press. Nothing contained in this section shall be construed to prohibit executive sessions or conferences of such boards and commissions at which no business shall be transacted. Added 50 Del.Laws, Ch. 291, § 1, eff. June 13, 1955.

APPENDIX II-B - Delaware Code Title 29, sec.10001 to 10005
Effective in 1979-80 in this form

# CHAPTER 100. FREEDOM OF INFORMATION ACT


Sec.
10001. Declaration of policy.
10002. Definitions.
10003. Examination and copying of public records.
10004. Open meetings.
10005. Enforcement.


## § 10001. Declaration of policy.

It is vital in a democratic society that public business be performed in an open and public manner so that the citizens shall be advised of the performance of public officials and of the decisions that are made by such officials in formulating and executing public policy. Toward this end, this chapter is adopted, and shall be construed. (60 Del. Laws, c. 641, § 1.)

## § 10002. Definitions.

(a) "Public body" means any regulatory, administrative, advisory, executive or legislative body of the State or any political subdivision of the State including, but not limited to, any board, bureau, commission, department, agency, committee, counsel, legislative committee, association or any other entity established by an act of the General Assembly of the State, which: (1) Is supported in whole or in part by public funds; (2) expends or disburses public funds; or (3) is specifically charged by any other public body to advise or make recommendations.

(b) "Public business" means any matter over which the public body has supervision, control, jurisdiction or advisory power.

(c) "Public funds" are those funds derived from the State or any political subdivision of the State, but not including grants-in-aid.

(d) "Public record" is written or recorded information made or received by a public body relating to public business. For purposes of this chapter, the following records shall not be deemed public:

(1) Any personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy, under this legislation or under any State or federal law as it relates to personal privacy;

(2) Trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature;

(3) Investigatory files compiled for civil or criminal law-enforcement purposes including pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue;

(4) Criminal files and criminal records, the disclosure of which would constitute an invasion of personal privacy. Any person may, upon proof of

identity, obtain a copy of his personal criminal record. All other criminal records and files are closed to public scrutiny. Agencies holding such criminal records may delete any information, before release, which would disclose the names of witnesses, intelligence personnel and aids or any other information of a privileged and confidential nature;

(5) Intelligence files compiled for law-enforcement purposes, the disclosure of which could constitute an endangerment to the local, state or national welfare and security;

(6) Any records specifically exempted from public disclosure by statute or common law;

(7) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor;

(8) Any records involving labor negotiations or collective bargaining;

(9) Any records pertaining to pending or potential litigation which are not records of any court;

(10) Any record of discussions allowed by § 10004(b) of this title to be held in executive session; or

(11) Any records which disclose the identity or address of any person holding a permit to carry a concealed deadly weapon; provided, however, all records relating to such permits shall be available to all bona fide law-enforcement officers.

(e) "Meeting" means the formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business.

(f) "Agenda" shall include but is not limited to a general statement of the major issues expected to be discussed at a public meeting.

(g) "Public body," "public record" and "meeting" shall not include activities of the Farmers' Bank of the State of Delaware or the University of Delaware, except that the Board of Trustees of the University shall be a "public body," and University documents relating to the expenditure of public funds shall be "public records," and each meeting of the full Board of Trustees shall be a "meeting." (60 Del. Laws, c. 641, § 1; 61 Del. Laws, c. 55, § 1.)

Note: Section 10003 pertains to public records

## § 10004. Open meetings.

(a) Every meeting of all public bodies shall be open to the public except those closed pursuant to subsections (b), (c), (d) and (g) of this section.

(b) A public body at any meeting may call for an executive session closed to the public pursuant to subsection (c) of this section for any of the following purposes:

(1) Discussion of individual citizen's qualifications to hold a job or pursue training unless the citizen requests that such a meeting be open;

(2) Preliminary discussions on site acquisitions for any publicly funded capital improvements;

(3) Activities of any law-enforcement agency in its efforts to collect information leading to criminal apprehension;

(4) Strategy sessions with respect to collective bargaining, pending or potential litigation, when an open meeting would have effect on the bargaining or litigation position of the public body;

(5) Discussions which would disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor;

(6) Discussion of the content of documents, excluded from the definition of "public record" in § 10002 of this title where such discussion may disclose the contents of such documents;

(7) The hearing of student disciplinary cases unless the student requests a public hearing;

(8) The hearing of employee disciplinary or dismissal cases unless the employee requests a public hearing;

(9) Personnel matters in which the names, competency and abilities of individual employees or students are discussed;

(10) Training and orientation sessions conducted to assist members of the public body in the fulfillment of their responsibilities;

(11) Discussion of potential or actual emergencies related to preservation of the public peace, health and safety;

(12) Where the public body has requested an attorney-at-law to render his legal advice or opinion concerning an issue or matter under discussion by the public body and where it has not yet taken a public stand or reached a conclusion in the matter; or

(13) Preliminary discussions resulting from tentative information relating to the management of the public schools in the following areas: School attendance zones; personnel needs; and fiscal requirements.

(c) A public body may hold an executive session closed to the public upon affirmative vote of a majority of members present at a meeting of the public body. The purpose for such executive session shall be announced ahead of time and shall be limited to the purposes listed in subsection (b) of this section. Executive sessions may be held only for the discussion of public business, and all voting on public business must be made at a public meeting and the results of the vote made public, unless disclosure of the existence or results of the vote would disclose information properly the subject of an executive session pursuant to subsection (b) of this section.

(d) This section shall not prohibit the removal of any person from a public meeting who is willfully and seriously disruptive of the conduct of such meeting.

(e) (1) This subsection concerning notice of meetings shall not apply to any emergency meeting which is necessary for the immediate preservation of the public peace, health or safety, or to the General Assembly.

(2) All public bodies shall give public notice of their regular meetings at least 7 days in advance thereof. The notice shall include the agenda, if such has been determined at the time, and the dates, times and places of such meetings; however, the agenda shall be subject to change to include additional items or the deletion of items at the time of the public body's meeting.

(3) All public bodies shall give public notice of the type set forth in paragraph (2) of this subsection of any special or rescheduled meeting no later than 24 hours before such meeting.

(4) Public notice required by this subsection shall include, but not be limited to, conspicuous posting of said notice at the principal office of the public body holding the meeting, or if no such office exists at the place where meetings of the public body are regularly held, and making a reasonable number of such notices available.

(5) When the agenda is not available as of the time of the initial posting of the public notice it shall be added to the notice at least 6 hours in advance of said meeting.

(f) Each public body shall make available for public inspection and copying as a public record minutes of all regular, special and emergency meetings. Such minutes shall include a record of those members present and a record, by individual members, of each vote taken and action agreed upon. Such minutes or portions thereof, and any public records pertaining to executive sessions conducted pursuant to this section, may be withheld from public disclosure so long as public disclosure would defeat the lawful purpose for the executive session, but no longer.

(g) This section shall not apply to the proceedings of:

(1) Grand juries;
(2) Petit juries;
(3) Special juries;
(4) The deliberations of any court;
(5) The Board of Pardons and Parole; and
(6) Public bodies having only 1 member. (60 Del. Laws, c. 641, § 1.)

## § 10005. Enforcement.

Any action taken at a meeting in violation of this chapter may be voidable by the Court of Chancery. Any citizen may challenge the validity under this chapter of any action of a public body by filing suit within 30 days of the citizen's learning of such action but in no event later than 6 months after the date of the action. Any citizen denied access to public records as provided in this chapter may bring suit within 10 days of such denial. Venue in such cases where access to public records is denied shall be placed in a court of competent jurisdiction for the county or city in which the public body ordinarily meets or in which the plaintiff resides. Remedies permitted by this section include a declaratory judgment, writ of mandamus and other appropriate relief. (60 Del. Laws, c. 641, § 1.)

APPENDIX III - A - Hawaii Rev. Stat sec. 92-1 through 92-5
Effective until 1975

§92-1 Definitions. When used in this part:

(1) The term "board" means any agency, board, commission, authority, or committee of the State or its political subdivisions, either legislative or executive, but not including bodies of the judicial branch, established by law to serve a public purpose, whether the agency, board, commission, authority, or committee is within or without the formal structure of government.

(2) The term "public record" means any written or printed report, book or paper, map or plan of the State or of a county and their respective subdivisions and boards, which is the property thereof, and in or on which an entry has been made or is required to be made by law, or which any public officer or employee has received or is required to receive for filing, but shall not include records which invade the right of privacy of an individual. [L 1959, c 43, §1; Supp. §7A-1]

§92-2 Public meetings. Except as otherwise provided in this chapter all meetings of every board shall be open to the public. [L 1959, c 43, §2; Supp. §7A-2]

§92-3 Executive sessions. No board may meet in executive session, from which the public may be excluded except by a two-thirds recorded vote of its membership. No ordinance, ruling, regulation, contract, appointment, or decision shall be finally acted upon at any executive session. [L 1959, c 43, §3; Supp. §7A-3]

§92-4 Public records; available for inspection; cost of copies. All public records shall be available for inspection by any person during established office hours unless public inspection of such records is in violation of any other state or federal law, provided that, except where such records are open under any rule of court, the attorney general and the responsible attorneys of the various counties may determine which records in their offices may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding, prior to its commencement, to which the State or county is or may be a party, or when such records do not relate to a matter in violation of law and are deemed necessary for the protection of the character or reputation of any person.

Certified copies of extracts from public records shall be given by the officer having the same in custody to any person demanding the same and paying or tendering 20 cents a folio of one hundred words for such copies or extracts. [L 1959, c 43, §4; Supp. §7A-4]

§92-5 Minutes. All boards shall maintain minutes of their meetings setting forth an accurate record of votes and actions taken at the meetings. Unless otherwise required by the governor in the case of the State, by the mayor of the city and county of Honolulu or the county chairman in the case of the various counties, the minutes need not include a verbatim record of discussions at the meetings. The minutes of all boards shall be deemed public records; provided that the minutes of any executive session may remain secret so long as their publication would defeat the lawful purpose of the executive session, but no longer. [L 1959, c 43, §5; Supp. §7A-5]

APPENDIX III - B - Hawaii Rev. Stat.sec. 92-1 through 92-13
Effective in 1979-80 in this form

§92-1 Declaration of policy and intent. In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy – the discussions, deliberations, decisions, and action of governmental agencies – shall be conducted as openly as possible. To implement this policy the legislature declares that:

(1) It is the intent of this part to protect the people's right to know;
(2) The provisions requiring open meetings shall be liberally construed; and
(3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings. [L 1975, c 166, pt of §1]

§92-2 Definitions. As used in this part:

(1) "Board" means any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction or advisory power over specific matters and which is required to conduct meetings and to take official actions.
(2) "Chance meeting" means a social or informal assemblage of two or more members at which matters relating to official business are not discussed.
(3) "Meeting" means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1976, c 212, §1]

§92-3 Open meetings. Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5, provided further that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. [L 1975, c 166, pt of §1]

§92-4 Executive meetings. A board may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present. A meeting closed to the public shall be limited to matters exempted by section 92-5. The vote of each member on the question of holding a meeting closed to the public and the reason for holding such a meeting shall be recorded and entered into the minutes of the meeting. [L 1975, c 166, pt of §1]

§92-5 **Exceptions.** (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

(1) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against him, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;

(2) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;

(3) To consult with the board's attorney;

(4) To investigate proceedings regarding criminal misconduct; and

(5) To consider sensitive matters related to public safety or security.

(b) This part shall not apply to any chance meeting at which matters relating to official business are not discussed. No chance meeting or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1]

Attorney General Opinions

Subsection (a)(1) is applicable only when a specific individual is involved. Att. Gen. Op. 75-11.

§92-6 **Judicial branch, quasi-judicial boards and investigatory functions; applicability.** (a) This part shall not apply:

(1) To the judicial branch.

(2) To adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes.

In the application of this section, boards exercising adjudicatory functions include, but are not limited to, the following:

(i) Hawaii Employment Relations Board, chapter 377;

(ii) Hawaii Public Employment Relations Board, chapter 89;

(iii) Labor and Industrial Relations Appeals Board, chapter 371;

(iv) Hawaii Paroling Authority, chapter 353;

(v) Civil Service Commission, chapter 26;

(vi) Board of Trustees, Employees' Retirement System of the State of Hawaii, chapter 88;

(vii) Criminal Injuries Compensation Commission, chapter 351; and

(viii) State Ethics Commission, chapter 84.

(b) Notwithstanding provisions in this section to the contrary, this part shall apply to require open deliberation of the adjudicatory functions of the Land Use Commission. [L 1975, c 166, pt of §1; am L 1976, c 92, §8]

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§92-7 Notice. (a) The board shall give written public notice of any regular, special or rescheduled meeting. The notice shall include an agenda which lists all of the items to be considered at the forthcoming meeting, the date, time and place of the meeting.

(b) The board shall file the notice in the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office for public inspection, at least seventy-two hours before the meeting. The notice shall also be posted at the site of the meeting whenever feasible. No board shall change the agenda, once filed, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda in the manner provided herein if it is of reasonably major importance and action thereon by the board will affect a significant number of persons.

(c) The board shall maintain a list of names and addresses of persons who request notification of meetings and shall mail a copy of the notice to such persons at their last recorded address no later than the time the agenda is filed under subsection (b). [L 1975, c 166, pt of §1; am L 1976, c 212, §2]

§92-8 Emergency meetings. If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting provided:

(1) The board states in writing the reasons for its findings;
(2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;
(3) An emergency agenda and the findings are filed with the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office; and
(4) Persons requesting notification are contacted by mail or telephone as soon as practicable. [L 1975, c 166, pt of §1]

§92-9 Minutes. (a) The board shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. The minutes shall include, but need not be limited to:

(1) The date, time and place of the meeting;
(2) The members of the board recorded as either present or absent;
(3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and
(4) Any other information that any member of the board requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within thirty days after the meeting except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.

(c) All or any part of a meeting of a board may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction, except when a meeting is closed pursuant to section 92-4; provided the recording does not actively interfere with the conduct of the meeting. [L 1975, c 166, pt of §1]

§92-10 Legislative branch; applicability. Notwithstanding any provisions contained in this chapter to the contrary, open meeting requirements, and provisions regarding enforcement, penalties and sanctions, as they are to relate to the state legislature or to any of its members shall be such as shall be from time to time prescribed by the respective rules and procedures of the senate and the house of representatives, which rules and procedures shall take precedence over this part. Similarly, provisions relating to notice, agenda and minutes of meetings and such other requirements as may be necessary, shall also be governed by the respective rules and procedures of the senate and the house of representatives. [L 1975, c 166, pt of §1]

§92-11 Voidability. Any final action taken in violation of sections 92-3 and 92-7 shall be voidable upon proof of wilful violation. A suit to void any final action shall be commenced within ninety days of the action. [L 1975, c 166, pt of §1]

§92-12 Enforcement. (a) The attorney general and the prosecuting attorney shall enforce this part.

(b) The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy. [L 1975, c 166, pt of §1]

§92-13 Penalties. Any person who wilfully violates any provisions of this part shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law. [L 1975, c 166, pt of §1]

APPENDIX IV - A - Indiana Stat. 5-14-1-1 through 5-14-1-6 Effective through 1977. (Note: certain portions were superseded by the Indiana Open Door Law)

PUBLIC PROCEEDINGS AND PUBLIC RECORDS—ANTI-SECRECY ACT


| SECTION. | | SECTION. | |
|---|---|---|---|
| 5-14-1-1. | Construction of act. | 5-14-1-5. | Exceptions to act — Confidential records—Executive sessions of administrative body or agency. |
| 5-14-1-2. | Definitions. | | |
| 5-14-1-3. | Right of inspection of public records. | 5-14-1-6. | Violation of act by official — Penalty — Separability. |
| 5-14-1-4. | Citizen permitted to observe public proceedings. | | |


5-14-1-1 [57-601]. Construction of act.—Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principal [principle] that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the state of Indiana that all of the citizens of this state are, unless otherwise expressly provided by law, at all times entitled to full and complete information regarding the affairs of government and the official acts of those whom the people select to represent them as public officials and employees.

To that end, the provisions of this act [5-14-1-1—5-14-1-6] shall be liberally construed with the view of carrying out the above declaration of policy. [Acts 1953, ch. 115, § 1, p. 427.]

5-14-1-2 [57-602]. Definitions.—As used in this act [5-14-1-1—5-14-1-6]:

(1) The term "public records" shall mean any writing in any form necessary, under or required, or directed to be made by any statute or by any rule or regulation of any administrative body or agency of the state or any of its political subdivisions.

(2) The term "public proceedings" shall mean the transaction of governmental functions affecting any or all of the citizens of the state by any administrative body or agency of the state, or any of its political subdivisions when such administrative body or agency is convened for the purpose of transacting the governmental function with which it is charged under any statute or under any rule or regulation of such administrative body or agency. [Acts 1953, ch. 115, § 2, p. 427.]

5-14-1-3 [57-603]. Right of inspection of public records.—Except as may now or hereafter be otherwise specifically provided by law, every citizen of this state shall, during the regular business hours of all administrative bodies or agencies of the state, or any political subdivision thereof, have the right to inspect the public records of such administrative bodies or agencies, and to make memoranda abstracts from the records so inspected. [Acts 1953, ch. 115, § 3, p. 427.]

5-14-1-4 [57-604]. Citizen permitted to observe public proceedings.—Except as may now or hereafter be otherwise specifically provided by law, all public proceedings shall be open to any citizen of this state, and every citizen shall, insofar as physical facilities permit, be permitted to observe such proceedings. [Acts 1953, ch. 115, § 4, p. 427.]

5-14-1-5 [57-605]. Exceptions to act—Confidential records—Executive sessions of administrative body or agency.—Nothing in this act [5-14-1-1—5-14-1-6] contained shall be construed to modify or repeal any existing law with regard to public records which, by law, are declared to be confidential. Nor shall anything in this act be construed to modify or repeal any existing law, rule or regulation, with regard to the holding of executive sessions by any administrative body or agency. Provided, however, That no administrative body or agency shall, under the guise of holding an executive session, conduct public proceedings in such a manner as to defeat the declared policy of this act as set forth in section 1 [5-14-1-1] hereof. [Acts 1953, ch. 115, § 5, p. 427.]

5-14-1-6 [57-606]. Violation of act by official — Penalty — Separability.—(a) Any public official of the state, or of any political subdivision thereof, who denies to any citizen the rights guaranteed to such citizen under the provisions of section[s] 3 and 4 [5-14-1-3, 5-14-1-4] of this chapter, and any public official who, under the guise of participating in an executive session of the administrative body or agency of which he is a member, attempts to defeat the purposes of this chapter [5-14-1-1—5-14-1-6] as set forth in section 1 [5-14-1-1] hereof, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than fifty dollars [$50.00] nor more than five hundred dollars [$500] to which may be added imprisonment in the county jail for a term not to exceed thirty [30] days.

(b) Any citizen who has been denied the rights guaranteed under section 3 [5-14-1-3] of this chapter, may bring a complaint to compel inspection. The citizen need not allege or prove any special damage different from that suffered by the public at large.

(c) Any citizen who has been denied the rights guaranteed under section 4 [5-14-1-4] of this chapter may bring a complaint for an injunction. The citizen need not allege or prove any special damage different from that suffered by the public at large.

(d) Any resolution, rule, regulation, decision or formal action of any kind adopted at an executive session of the administrative body or agency adopted after passage of this chapter [August 14, 1953] which attempts to defeat the purpose of this chapter as set forth in section 1 [5-14-1-1] of this chapter shall be null and void.

(e) Each section, subsection, sentence, clause and phrase of this chapter is declared to be an independent section, subsection, sentence, clause or phrase, and the finding or holding of any section, subsection, sentence, clause or phrase to be unconstitutional, void or ineffective for any cause shall not affect any other section, subsection, sentence or part thereof. [Acts 1953, ch. 115, § 6, p. 427; 1971, P. L. 51, § 1, p. 264.]

APPENDIX IV - B - Indiana Stat. 5-14-1.5-1 through 5-14-1.5-7
Effective in 1979-80 in this form

# CHAPTER 1.5

## THE INDIANA OPEN DOOR LAW


| SECTION. | | SECTION. | |
|---|---|---|---|
| 5-14-1.5-1. | Intent of chapter — Construction. | 5-14-1.5-5. | Notice of meetings. |
| 5-14-1.5-2. | Definitions. | 5-14-1.5-6. | Executive sessions. |
| 5-14-1.5-3. | Meetings of governing bodies of public agencies to be open — Secret ballot vote. | 5-14-1.5-6.5. | Meetings of governing bodies with employee organizations. |
| 5-14-1.5-4. | Agenda — Posting of copy — Action by agenda number — Memoranda of meeting — Inspection of minutes. | 5-14-1.5-7. | Enjoining of violations of chapter — Limitation of actions — Award of litigation expenses. |


5-14-1.5-1. Intent of chapter — Construction. — In enacting this chapter [5-14-1.5-1—5-14-1.5-7], the general assembly finds and declares that this state and its political subdivisions exist only to aid in the conduct of the business of the citizens of this state. It is the intent of this chapter that the deliberations and actions of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the citizens may be fully informed. The purposes of this chapter are hereby declared to be remedial, and its provisions are to be liberally construed with the view of carrying out its policy. [IC 5-14-1.5-1, as added by Acts 1977, P.L. 57, § 1, p. 343.]

5-14-1.5-2. Definitions. — For the purposes of this chapter:

(a) "Public agency" means:

(1) Any board, commission, department, agency or authority, by whatever name designated, exercising a portion of the executive, administrative or legislative power of the state;

(2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power;

(3) Any entity which is subject to either: (i) budget review by either the state board of tax commissioners or the governing body of a county, city, town, township, or school corporation; or (ii) audit by the state board of accounts;

(4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities; or

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(b) "Governing body" means the board, commission, council, or other body of a public agency which takes official action upon public business and includes any committee appointed by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.

(c) "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include: (i) any social or chance gathering not intended to avoid this chapter; (ii) any on-site inspection of any project or program; (iii) traveling to and attending meetings of organizations devoted to betterment of government; or (iv) a caucus.

(d) "Official action" means:

(1) To receive information or to deliberate on public business;

(2) To make recommendations pursuant to statute, ordinance, or executive order;

(3) To establish policy;

(4) To make decisions on public business; or

(5) To take final action.

(e) "Public business" means the function for which the public agency is created.

(f) "Executive session" means a meeting from which the public is excluded[,] except[,] the governing body may admit those persons necessary to carry out the purpose of the executive session.

(g) "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.

(h) "Caucus" means a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action.

(i) "Deliberate" means a discussion which may reasonably be expected to result in official action defined under section 2(d)(2), (3), (4) or (5) of this chapter [subsection (d)(2), (3), (4) or (5) of this section].

(j) "News media" means all newspapers qualified to receive legal advertisements under IC 5-3-1 [5-3-1-1 — 5-3-1-9], all wire services and all licensed commercial or public radio or television stations. [IC 5-14-1.5-2, as added by Acts 1977, P.L. 57, § 1; 1979, P.L. 39, § 1.]

5-14-1.5-3. Meetings of governing bodies of public agencies to be open — Secret ballot vote. — (a) Except as provided in section 6 [5-14-1.5-6] herein, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them.

(b) A secret ballot vote may not be taken at a meeting. [IC 5-14-1.5-3, as added by Acts 1977, P.L. 57, § 1, p. 343.]

5-14-1.5-4. Agenda — Posting of copy — Action by agenda number — Memoranda of meeting — Inspection of minutes. — (a) A governing body of a public agency utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. A rule, regulation, ordinance or other final action adopted by reference to agenda number or item alone is void.

(b) As the meeting progresses, the following memoranda shall be kept: (i) The date, time and place of the meeting; (ii) the members of the governing body recorded as either present or absent; (iii) the general substance of all matters proposed, discussed or decided; and (iv) a record of all votes taken, by individual members if there is a roll call. The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings. The minutes, if any, are to be open for public inspection and copying. [IC 5-14-1.5-4, as added by Acts 1977, P.L. 57, § 1, p. 343.]

5-14-1.5-5. Notice of meetings. — (a) Public notice of the date, time and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight [48] hours before the meeting; this requirement does not apply to reconvened meetings where announcement of the date, time and place of the reconvened meetings is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda.

(b) Public notice shall be given by the governing body of a public agency by:

(1) Posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held; and

(2) Depositing in the United States mail with postage prepaid or by delivering notice to all news media which file by January 1 an annual written request for such notices with the governing body of the public agency.

(c) Notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time or place of a regular meeting or meetings is changed. This subsection does not apply to executive sessions.

(d) If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of the governmental activity under the jurisdiction of the public agency by any event, then the time requirements of notice under this section shall not apply, but:

(1) News media which have requested notice of meetings must be given the same notice as is given to the members of the governing body; and

(2) The public must be notified by posting a copy of the notice according to this section.

(e) This section shall not apply where notice by publication is required by statute, ordinance or regulation.

(f) This section shall not apply to the state board of tax commissioners, to boards of county commissioners, town boards, or to any other governing body which meets in continuous session, except that this section shall apply to meetings of these governing bodies which meetings are required by or held pursuant to statute, ordinance or regulation.

(g) This section does not apply to the Indiana general assembly. [IC 5-14-1.5-5, as added by Acts 1977, P.L. 57, § 1; 1979, P.L. 39, § 2.]

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5-14-1.5-6. Executive sessions. — (a) Executive sessions may be held only in the following instances: (i) where authorized by federal or state statute; (ii) for discussion of strategy with respect to: collective bargaining, initiation of litigation or litigation which is either pending or has been threatened specifically in writing, the implementation of security systems, or the purchase or lease of real property up to the time a contract or option to purchase or lease is executed by the parties; however, all such strategy discussions must be necessary for competitive or bargaining reasons; (iii) interviews with industrial or commercial prospects or their agents; (iv) interviews with prospective employees; (v) with respect to any individual over whom the governing body has jurisdiction: to receive information concerning the individual's alleged misconduct, and to discuss, prior to any determination, that individual's status as an employee, student, or independent contractor; (vi) for discussion of records classified as confidential by state or federal statute; (vii) to discuss before any placement decision an individual student's abilities, past performance, behavior, and needs; and (viii) to discuss a job performance evaluation of individual employees.

(b) A final action must be taken at a meeting open to the public.

(c) Public notice of executive sessions must state their purpose or subject matter. The requirements stated in section 4 [5-14-1.5-4] of this chapter for memoranda and minutes being made available to the public is modified as to executive sessions in that they need identify only the subject considered.

(d) A governing body may not conduct an executive session during a meeting, except as otherwise permitted by applicable statute. A meeting may not be recessed and reconvened with the intent of circumventing this subsection. [IC 5-14-1.5-6, as added by Acts 1977, P.L. 57, § 1; 1979, P.L. 39, § 3.]

5-14-1.5-6.5. Meetings of governing bodies with employee organizations. — Whenever a governing body, or any person or persons authorized to act for a governing body, meets with an employee organization, or any person or persons authorized to act for an employee organization, for the purpose of collective bargaining or discussion, the following apply:

(1) Any party may inform the public of the status of collective bargaining or discussion as it progresses by release of factual information and expression of opinion based upon factual information.

(2) If a mediator is appointed, any report he may file at the conclusion of mediation is a public record open to public inspection.

(3) If a factfinder is appointed, any hearings he holds must be open at all times for the purpose of permitting members of the public to observe and record them. Any findings and recommendations he makes are public records open to public inspections as provided by IC 20-7.5-1-13(e) or any other applicable statute relating to factfinding in connection with public collective bargaining. [IC 5-14-1.5-6.5, as added by Acts 1979, P.L. 39, § 4.]

5-14-1.5-7. Enjoining of violations of chapter — Limitation of actions — Award of litigation expenses. — (a) An action may be filed by any citizen of this state in any court of competent jurisdiction to enjoin continuing, threatened or future violations of this chapter, or to declare void any action taken at an executive session in violation of section 3(a) [5-14-1.5-3(a)] of this chapter or at any meeting of which notice is not given in accordance with section 5 [5-14-1.5-5] of this chapter. The plaintiff in such suit need not allege or prove special damage different from that suffered by the public at large.

(b) Any action to declare any act of a governing body null and void, or to enter an injunction which would invalidate any act of a governing body, based on violation of this chapter occurring before the action is commenced, including but not limited to provisions on executive sessions and notice, shall be commenced (i) prior to the delivery of any warrants, notes, bonds, or obligations if the relief sought would have the effect, if granted, of invalidating the notes, bonds or obligations, or (ii) within thirty [30] days of the act or failure to act complained of, whichever is sooner.

(c) In any action filed under this section, a court may award reasonable attorney fees, court costs, and other reasonable expenses of litigation to the prevailing party if (i) the plaintiff prevails and the court finds the defendant's violation is knowing and intentional, or (ii) the defendant prevails and the court finds the action is frivolous and vexatious. [IC 5-14-1.5-7, as added by Acts 1977, P.L. 57, § 1; 1979, P.L. 39, § 5.]

APPENDIX V-A - Maryland open meeting statutes in force prior to the enactment of the comprehensive open meeting law in 1977.

## Art. 23A, § 8

**§ 8. Meetings of municipal legislative bodies to be public.**

All meetings, regular and special, of the legislative body, by whatever name known, in every municipal corporation in Maryland, including the City of Baltimore, shall be public meetings and open to the public at all times. Nothing contained herein shall be construed to prevent any such body from holding an executive session from which the public is excluded but no ordinance, resolution, rule or regulation shall be finally adopted at such an executive session. (1954, ch. 13.)

## Art. 25, § 5

**§ 5. Meetings of county governing bodies to be public.**

All meetings, regular and special, of the board of county commissioners or of the county council of any county in this State, shall be public meetings and open to the public at all times. Nothing contained herein shall be construed to prevent any such board or council from holding an executive session from which the public is excluded but no ordinance, resolution, rule or regulation shall be finally adopted at such an executive session. (1954, ch. 13.)

## Art. 41, § 14

**§ 14. Meetings of boards, etc., to be public.**

All meetings, regular and special, of the boards or commissions in control of any department, bureau or other agency of the Executive Department in the government of Maryland shall be public meetings and open to the public at all times. Nothing contained herein shall be construed to prevent any such board or commission from holding an executive session from which the public is excluded but no ordinance, resolution, rule or regulation shall be finally adopted at such an executive session. (1954, ch. 13.)

APPENDIX V - B - Comprehensive open meeting laws in Maryland
Md. Code sec. 76a-7 through 76a-31.
Effective in 1979-80 in this form

## § 7. Public policy.

It is essential to the maintenance of a democratic society that except in special and appropriate circumstances public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. (1977, ch. 863, § 2.)

## § 8. Definitions.

(a) As used in this subtitle, the following terms have the meanings indicated.

(b) *"Advisory function"* means the study, evaluation, or the making of recommendations on matters of public concern pursuant to an official delegation of responsibility in the form of a constitutional or charter provision, law, statute, resolution, ordinance, order, rule, regulation, or other formal action by or on behalf of a public body which exercises legislative, quasi-legislative, executive, judicial or quasi-judicial functions, or by the Governor or the chief executive of a political subdivision of the State.

(c) *"Executive function"* means the administration or application by a public body of the laws of the State or a political subdivision of the State, or of the rules, regulations, or bylaws of a public body. However, it does not include an action included within the definition of advisory, legislative, quasi-legislative, judicial, or quasi-judicial function.

(d) *"Judicial function"* means the power, including but not limited to Article IV, § 1 of the State Constitution, exercised by the judicial branch of the government. The term includes the functions exercised by grand and petit juries, the Commission on Judicial Disabilities, and the judicial nominating commissions, but does not include the function exercised by courts in making rules which is deemed a quasi-legislative function.

(e) *"Legislative function"* means the approval, disapproval, enactment, amendment or repeal or the process of approving, disapproving, enacting, amending or repealing by any public body of any law, statute, resolution, ordinance, or other measure to set public policy; the approval or disapproval or the process of approving or disapproving by any public body of any appointment; the proposing or the process of proposing by a public body of any Constitution, constitutional amendment, charter, or charter amendment; or the ratification or process of ratifying by any public body of any constitution or constitutional amendment.

(f) *"Meeting"* means the convening of a quorum of the constituent membership of a public body for the purpose of considering or transacting public business. It does not include chance encounters, social gatherings, or other occasions which are not designed or intended for the purpose of circumventing the provisions of this subtitle.

(g) *"Public body"* means an entity consisting of two or more persons that is created by the State Constitution, by State statute, local charter or ordinance, or rule, resolution or bylaw, or by executive order of the Governor or the chief executive authority of a political subdivision of the State.

(h) *"Quasi-judicial function"* means the determination of a contested case to which the provisions of the Administrative Procedure Act or Chapter 1100, Subtitle B, of the Maryland Rules are applicable.

(i) *"Quasi-legislative function"* means

(1) The adoption, amendment, disapproval or repeal of a rule, regulation, or bylaw having the force of law by a public body, or the process of doing so;

(2) The approval, disapproval, or amendment of a contract or a budget by a public body, or the process of doing so

(j) *"Quorum"* means a simple majority of the members of a public body, unless a different number is required by law, rule, or regulation. (1977, ch. 863, § 2.)

## § 9. Applicability of subtitle.

This subtitle shall apply to a public body when it is exercising legislative, quasi-legislative or advisory functions. This subtitle shall not apply to a public body when exercising executive, judicial or quasi-judicial functions; the Governor's executive council or its counterpart in local government, or any committee of the council or its counterpart. (1977, ch. 863, § 2; 1979, ch. 507.)

## § 10. Meetings to be open; attendance by public.

(a) Subject to the provisions of § 9, the meetings of every public body shall be open to the public unless closed in accordance with § 11.

(b) Members of the general public have the right to attend the open meetings of public bodies. A public body may remove or cause the removal of any person or persons from an open meeting upon a determination by the presiding officer of the public body that the person's behavior is disruptive to the meeting. The public body, its members, and its agents shall not be liable as the result of a removal for this reason unless they act maliciously. (1977, ch. 863, § 2.)

## § 11. Closed meetings.

(a) A public body required to have an open meeting by § 10 may have a closed meeting, or may adjourn an open meeting into closed session for any of the following purposes, but not otherwise:

(1) Discussion of the employment, assignment, appointment, promotion, demotion, compensation, discipline, removal, or resignation of employees, appointees, or officials over whom it has jurisdiction, or any other personnel matter affecting one or more particular individuals;

(2) Protection of the privacy or reputation of individuals in matters not related to public business;

(3) Considering the acquisition of real property for a public purpose and matters directly related thereto;

(4) Considering preliminary matters concerning a proposal of or for a business or industrial organization to locate in the State or any part of the State;

(5) Considering the investment of public funds or the marketing of public securities;

(6) Consultation with legal counsel;

(7) Consultation with staff personnel, consultants, attorneys, or other persons in connection with pending or potential litigation;

(8) Conducting collective bargaining negotiations or considering matters and issues in connection therewith;

(9) Discussion concerning public security, including the deployment of fire and police services and personnel and the development and implementation of emergency plans;

(10) Preparation, administration, or grading of scholastic, licensing, or qualifying examinations;

(11) Investigative proceedings concerning possible or actual criminal misconduct;

(12) Complying with a specific constitutional, statutory, or judicially imposed requirement protecting particular proceedings or matters from public disclosure; or

(13) On an individually recorded affirmative vote of two thirds of the members present, for some other exceptional reason so compelling as to override the general public policy in favor of open meetings.

(b) If a meeting is held in closed session pursuant to subsection (a):

(1) No action may be taken and no matter may be discussed other than those permitted by subsection (a); and

(2) A statement of the time, place, and purpose of any closed meeting, the record of the vote of each member by which any meeting was closed, and the authority under this section for closing any meeting shall be included in the minutes of the next public meeting or public session of the public body. (1977, ch. 863, § 2.)

## § 12. Notice of meetings.

(a) Subject to the provisions of § 9, every public body shall give reasonable advance notice of its open meetings. Notice of meetings held in closed session shall be as provided in § 11 (b) (2).

(b) Whenever reasonable under all the circumstances, the notice shall be in writing and shall include the date, time, and place of the meeting.

(c) The notice required under this section may be given by any of the following means:

(1) Publication in the Maryland Register if it is a State agency;

(2) Delivery to representatives of the news media that regularly report on meetings of the public body or the activities of the State or local government of which the public body is a part;

(3) Posting or depositing the notice at a convenient public location at or near the place of the meeting if prior public notice has been given that this method will be used; or

## § 13. Minutes.

(a) Subject to the provisions of § 9, every public body shall keep written minutes of all of its meetings. The minutes shall reflect the items considered and all actions taken thereon, as well as any recorded vote taken.

(b) These minutes shall be prepared as soon as practicable under the circumstances. They are public records and shall be open to public inspection during ordinary business hours. However, notwithstanding the provisions of Article 76A, minutes of a meeting lawfully held in closed session may not be open to public inspection if that would frustrate the purpose for having the closed session.

(c) This section does not require a change in the form or content of the official journals prepared and published by the Senate and House of Delegates of Maryland.

(d) The provisions of this section may not be construed to preclude any public body from including any other matters in its minutes. (1977, ch. 863, § 2.)

## § 14. Enforcement of subtitle.

(a) *Civil action authorized.* — Any person adversely affected by an action in violation of §§ 10 or 12 of this subtitle may file a suit in the circuit court having proper venue for the purpose of requiring compliance with the provisions of these sections, determining the applicability of these sections, or voiding the action.

(b) *Time for filing action.* — (1) If a violation of § 10 is alleged, the suit shall be filed within 45 days after the next public meeting or session following the alleged improper closed meeting or session, at which notice of the action taken or decision made at the closed meeting or session is given in accordance with § 11 (b).

(2) If a violation of § 12 is alleged, the suit shall be filed within 45 days after the public meeting for which notice was not properly given.

(c) *Presumption and burden of proof.* — In any action under this section, it shall be presumed that the public body did not violate §§ 10 or 12, and the burden of proving a violation is on the complainant.

(d) *Consolidation of actions.* — The proceeding may be consolidated with any other appeal from the action or decision of the public body.

(e) *Injunction and other relief.* — (1) In an action under this subtitle the court is authorized to issue an injunction, to determine the applicability of this subtitle to the discussions or decisions of public bodies, or to grant such other relief as may be appropriate.

(2) In an action under this subtitle, the court may declare void any final action taken at a meeting held in wilful violation of §§ 10 or 12 of this subtitle if the court finds that no other remedy would be adequate under the circumstances. However, the action of a public body may not be voided because of the violation of the subtitle by any other public body.

(f) *Fees and costs.* — The court may, as part of its judgment, assess against any party reasonable attorneys' fees and other litigation expenses incurred by any other party who prevails in the action. If the court deems it appropriate, it may require a reasonable bond to assure the payment of such fees and costs.

(g) *Section inapplicable to appropriations, tax levies and bond issues.* — This section does not apply to an action appropriating public funds, levying taxes, or providing for the issuance of bonds, notes or other evidences of public obligation.

(h) *Other remedies not affected.* — The provisions of this section do not affect or preclude the application of any other available remedies.

(i) *Strict construction of § 11 (a) (13).* — In an action under this subtitle involving the application of § 11 (a) (13) of this subtitle, the court shall strictly construe the provisions of § 11 (a) (13). (1977, ch. 863, § 2.)

## § 15. Conflict of laws.

In any conflict between this subtitle and other provisions of law relating to the meetings of public bodies, this subtitle shall apply, unless the provisions of other laws are more stringent. (1977, ch. 863, § 2.)

OPEN MEETINGS IN ST. MARY'S COUNTY

## § 16. Public policy.

It is the policy of this county that:

(a) Public officials shall conduct the entire process of public business in an open and public manner so that the electors are advised of the performance of public officials and of the decisions that are reached in public activity and in making public policy;

(b) Public agencies exist to aid in the conduct of the people's business;

(c) Public agencies shall deliberate matters, and take action on them, openly;

(d) The people of this county do not yield their sovereignty to the agencies which serve them;

(e) The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know; and

(f) The people's right to remain informed is protected so that they may retain control over the instruments they create. (1976, ch. 715, § 1; 1977, ch. 863, § 1.)

## § 17. Definitions.

(a) In this subtitle the following words have the meanings indicated.

(b) *"Public agency"* includes:

(1) Any agency, assembly, authority, board, bureau, commission, committee, counsel, or department of St. Mary's County, except as provided in § 24 of this subtitle, including advisory and quasi-judicial agencies, supported in whole or in part by public funds or authorized to expend public funds; and

(2) Subcommittees and other subordinate units of the agencies above.

(c) *"Meeting"* means the convening of a quorum of the constituent membership of a public agency to deliberate or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power.

(d) *"Public business"* means all matters within the jurisdiction of a public agency which are before an agency for official action or which reasonably, foreseeably may come before that agency in the future.

(e) *"Official action"* means the phases of the process in which a decision or recommendation is reached including receipt of information, deliberation and decision of a public agency.

(f) *"Staff meeting"* means a meeting of three or more staff members or a combination of three or more staff members of a public agency.

(g) *"Quorum"* unless otherwise defined by applicable law, means a simple majority of the constituent membership of a public body. (1976, ch. 715, § 1; 1977, ch. 617; ch. 863, § 1.)

## § 18. Meetings to be open.

(a) All meetings of a public agency at which official action is taken regarding public business are open to the public, except as provided in § 25.

(b) Staff meetings of a public agency are open to the public. (1976, ch. 715, § 1; 1977, ch. 617; ch. 863, § 1.)

Note: Sec. 20 was placed out of order in this appendix; see next page.

## § 19. Notice of meetings.

(a) All public agencies shall give written public notice of their regular meetings at the beginning of each calendar or fiscal year, or at the time the agency begins to function. This notice shall include the dates, times and places of the meetings.

(b) All public agencies shall give supplemental written public notice of any special or rescheduled meeting, except as provided in § 19 (d), no later than 48 hours before the meeting. The notice shall include the agenda, date, time and place of the meeting.

(c) Written public notice shall include, as a minimum:

(1) Posting a copy of the notice prominently at the principal office of the body holding the meeting or at the building in which the meeting is to be held;

(2) Mailing a copy of the notice to any person who requests to be notified of the meetings.

(d) When meetings are necessary to discuss unforeseen emergency conditions, an emergency meeting of a public agency may be scheduled. Reasonable effort shall be made to give notice of the date, time and place of an emergency meeting by telephone to the news media immediately after participants have been notified of the meeting.

(e) This section does not apply to staff meetings. (1976, ch. 715, § 1; 1977, chs. 53, 617; ch. 863, § 1.)

## § 21. Meeting areas.

Meetings required by this subtitle to be open to the public shall be conducted in areas having reasonable facilities for observation by the public. (1976, ch. 715, § 1; 1977, ch. 863, § 1.)

## § 22. Minutes.

(a) The minutes of all public meetings of public agencies shall be taken and timely recorded, and shall be a public record open for inspection and copying by any person.

(b) Minutes are not required of working sessions where final decisions are not made.

(c) Recording of minutes are not required of staff meetings. (1976, ch. 715, § 1; 1977, ch. 617; ch. 863, § 1.)

## § 23. Recording and broadcasting.

Public agencies conducting meetings required by this subtitle to be open to the public shall allow the use of recording and either recorded or live radio and television broadcast of the meetings. The public agencies may establish reasonable rules and regulations regarding the recording and broadcasting of the meetings. (1976, ch. 715, § 1; 1977, ch. 863, § 1.)

## § 24. Agencies excepted from subtitle.

This subtitle does not apply to the following public agencies:

(a) The judicial branch;

(b) Grand juries;

(c) Petit juries;

(d) Law-enforcement agencies. (1976, ch. 715, § 1; 1977, ch. 863, § 1.)

## § 20. Reconvened meetings.

A meeting of a public agency may be adjourned and reconvened at some other time without additional public notice provided:

(a) Notice of the time and place of the reconvened meeting is given before adjournment;

(b) The agenda for the reconvened meeting shall be published in advance; and

(c) That the agenda is available to observers of the original meeting at its commencement. (1976, ch. 715, § 1; 1977, ch. 863, § 1.)

Note: sections 21-24 appear on the previous page.

## § 25. Executive sessions.

(a) *Situations in which permitted.* — Meetings of public agencies and meetings of the staff of public agencies may be conducted in executive session in the following situations only:

(1) When a public agency or members of the staff consider or discuss the assignment, promotion, resignation, salary, demotion, dismissal, reprimand, or appointment of a member of a public agency or employee, the session may be closed, unless the person requests in writing for an open session. The request is a matter of public record;

(2) When a school board or its staff considers the disciplining of individual students and the parent, guardian or student requests an executive session;

(3) When a school board or its staff discusses individual special education students and the parent or guardian of the student or the student requests an executive session;

(4) When federal regulations prohibit an open meeting;

(5) When State law specifically prohibits an open meeting;

(6) When an open meeting would conflict with a condition for anonymity of the donor contained in a gift or bequest to a public agency;

(7) When secrecy is necessary to prevent the premature disclosure of examinations;

(8) When a public agency discusses strategy in collective bargaining or litigation, or engages in collective bargaining; and

(9) When public agencies discuss the distribution of police forces to cope with public safety emergencies.

(10) Cost estimates for capital projects to be subsequently placed through the bidding process.

(11) Preliminary discussion concerning purchase of real property.

(b) *Prior announcements; restricted to authorized business.* — An executive session may not be held without the prior announcement in an open meeting of the nature of the business of the executive session and only business specifically authorized by this section shall be taken up at the executive session.

(c) *Minutes.* — The justification for holding an executive or closed meeting shall be indicated by a citation in the minutes. Such citation shall include the time of the commencement of the meeting, names of those in attendance, the reason for the session, and the time of the conclusion of the meeting, but need not be limited to that, at the discretion of the body holding the meeting.

(d) *Final adoption of ordinance, resolution, rule, etc.* — An ordinance, resolution, rule, regulation or decision may not be finally adopted at an executive session.

(e) *Real property purchases.* — Any decision by a public agency to purchase real property must be made in public session. Notice of intent to purchase real property must be given at least 15 days before a voting session on that purchase. (1976, ch. 715, § 1; 1977, ch. 617; ch. 863, § 1; 1978, chs. 155, 415.)

### § 26. Repeated violations.

Knowing violation of this subtitle on more than two occasions constitutes a misdemeanor. (1976, ch. 715, § 1; 1977, ch. 863, § 1.)

### § 27. Enforcement.

(a) *Civil remedies.* — (1) The circuit courts of this State have jurisdiction over any civil action brought to enforce the provisions of this subtitle.

(2) Any person denied the rights conferred by this subtitle may commence a civil action by petitioning for mandamus, injunction or other appropriate remedy in any court of competent jurisdiction. The court shall hear the petition within seven days from the time it is made.

(3) It is not necessary for the plaintiff to allege or prove an irreparable injury or injury different from the public at large. Violation of this subtitle is an injury to the public at large.

(4) The court shall render a decree granting or denying all or part of the relief prayed for, determining the rights of the parties as to attorney's fees and costs, and determining the effect of any action alleged to be in violation of this subtitle.

(5) The provisions of this subtitle apply to conduct and actions occurring after July 1, 1976; and a party shall commence an action within one year of the alleged violation.

(b) *Penalty.* — Any person who wilfully violates this subtitle is guilty of a misdemeanor and punishable by a fine not to exceed $1,000 or imprisonment not to exceed one year, or both. Where a civil decree finding the defendant in violation of the provisions of this subtitle is not entered on at least one occasion prior to the occurrence of the alleged misdemeanor, a violation of this subtitle is presumed not to be wilful. (1976, ch. 715, § 1; 1977, ch. 863, § 1.)

### § 28. Validity of action not in conformity with subtitle.

Action taken at a meeting not in conformity with this subtitle may be declared null and void, at the discretion of the court. (1976, ch. 715, § 1; 1977, ch. 863, § 1.

### § 29. Conflict of laws.

If the provisions of this subtitle conflict with any other statute, ordinance, regulation or rule, the provisions of this subtitle shall control, unless the provisions of existing law are more stringent. (1976, ch. 715, § 1; 1977, ch. 863, § 1.)

### § 30. Maintenance of order.

This subtitle does not prevent a public agency from adopting reasonable rules and regulations for the maintenance of order at meetings. (1976, ch. 715, § 1; 1977, ch. 863, § 1.)

### § 31. Short title.

This subtitle may be cited as the "St. Mary's County Open Meetings Act." (1976, ch. 715, § 1; 1977, ch. 863, § 1.)

APPENDIX VI - Mississippi Code sec. 25-41-1 to 25-41-15
Effective in 1979-80 in this form.

## Open Meetings

Sec.
25-41-1. Legislative declaration.
25-41-3. Definitions.
25-41-5. Official meetings of public bodies to be public and open.
25-41-7. Executive sessions.
25-41-9. Conduct of persons attending meetings.
25-41-11. Minutes.
25-41-13. Notice of meetings.
25-41-15. Enforcement.

### § 25-41-1. Legislative declaration.

It being essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into the making of public policy, it is hereby declared to be the policy of the State of Mississippi that the formation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided herein.

SOURCES: Laws, 1975, ch. 481, § 1, eff from and after January 1, 1976.

### § 25-41-3. Definitions.

For purposes of this chapter, the following words shall have the meaning of ascribed herein, to wit:

(a) "Public body" shall mean: (i) any executive or administrative board, commission, authority, council, department, agency, bureau, or any other policy-making entity, or committee thereof, of the State of Mississippi, or any political subdivision or municipal corporation of the state, whether such entity be created by statute or executive order, which is supported wholly or in part by public funds or expends public funds, and (ii) any standing, interim or special committee of the Mississippi Legislature. There shall be exempted from the provisions of this chapter the judiciary, including all jury deliberations, public and private hospital staffs, public and private hospital boards and committees thereof, law enforcement officials, the military, the state probation and parole board, the workmen's compensation commission, legislative subcommittees and legislative conference committees.

(b) "Meeting" shall mean an assemblage of members of a public body at which official acts may be taken upon a matter over which the public body has supervision, control jurisdiction, or advisory power.

§ 25–41–5. Official meetings of public bodies to be public and open.

All official meetings of any public body, unless otherwise provided in this chapter or in the Constitutions of the United States of America or the State of Mississippi, are declared to be public meetings and shall be open to the public at all times unless declared an executive session as provided in section 25–41–7.

§ 25–41–7. Executive sessions.

(1) Any public body may enter into executive session for the transaction of public business; provided, however, all meetings of any such public body shall commence as an open meeting, and an affirmative vote of three-fifths (⅗) of all members present shall be required to declare an executive session.

(2) The procedure to be followed by any public body in declaring an executive session shall be as follows: Any member shall have the right to request by motion a closed determination upon the issue of whether or not to declare an executive session. Such motion, by majority vote, shall require the meeting to be closed for a preliminary determination of the necessity for executive session. No other business shall be transacted until the discussion of the nature of the matter requiring executive session has been completed and a vote, as required in subparagraph (1) hereof, taken on the issue.

(3) The total vote on the question of entering into an executive session shall be recorded and spread upon the minutes of such public body.

(4) Any such vote whereby executive session is declared shall be applicable only to that particular meeting on that particular day.

§ 25–41–9. Conduct of persons attending meetings.

Any public body may make and enforce reasonable rules and regulations for the conduct of persons attending its meetings.

§ 25–41–11. Minutes.

Minutes shall be kept of all meetings of a public body, whether in open or executive session, showing the members present and accurately recording any final actions taken at such meetings. The minutes shall be recorded and shall be open to public inspection during regular business hours within a reasonable time after recess or adjournment.

Minutes of legislative committee meetings shall consist of a written record of attendance and final actions taken at such meetings.

§ 25–41–13. Notice of meetings.

(1) Any public body which holds its meetings at such times and places and by such procedures as are specifically prescribed by statute shall continue to do so and no additional notice of such meetings shall be required except that provisions for any recess or interim meeting shall be entered upon the minutes of such public body.

(2) Any public body, other than a legislative committee, which does not have statutory provisions prescribing the times and places and the procedures by which its meetings are to be held shall, at its first regular or special meeting after the effective date of this chapter spread upon its minutes the times and places and the procedures by which all of its meetings are to be held.

(3) During a regular or special session of the Mississippi Legislature, notice of meetings of all committees, other than conference committees, shall be given by announcement on the loudspeaker during sessions of the house of representatives or senate or by posting on a bulletin board provided for that purpose by each body.

(4) When not in session, the meeting times and places of all committees shall be kept by the clerk of the house of representatives as to house committees and by the secretary of the senate as to senate committees, and shall be available at all times during regular working hours to the public and news media.

§ 25–41–15. Enforcement.

The chancery courts of this state shall have the authority to enforce the provisions of this chapter upon application of any citizen of the state, and shall have the authority to issue injunctions or writs of mandamus to accomplish that purpose.

# APPENDIX VII. New York Public Officers Law sec. 95-106 Effective in 1979-80 in this form

## ARTICLE 7—OPEN MEETINGS LAW [NEW]

Sec.
95. Legislative declaration.
96. Short title.
97. Definitions.
98. Open meetings and executive sessions.
99. Public notice.
100. Conduct of executive sessions.
101. Minutes.
102. Enforcement.
103. Exemptions.
104. Committee on public access to records.
105. Construction with other laws.
106. Severability.

### § 95. Legislative declaration

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal [1] will prosper and enable the government process to operate for the benefit of those who created it.

Formerly § 90, added L.1976, c. 511, § 1; renumbered 95, L.1977, c. 933, § 2.

### § 96. Short title

This article shall be known and may be cited as "Open Meetings Law".

Formerly § 91, added L.1976, c. 511, § 1; renumbered 96, L.1977, c. 933, § 2.

### § 97. Definitions

As used in this article: 1. "Meeting" means the official convening of a public body for the purpose of conducting public business.

2. "Public body" means any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body of such public body.

3. "Executive session" means that portion of a meeting not open to the general public.

Formerly § 92, added L.1976, c. 511, § 1; renumbered 97, L.1977, c. 933, § 2; amended L.1979, c. 704, § 1.

### § 98. Open meetings and executive sessions

(a) Every meeting of a public body shall be open to the general public, except that an executive session of such body may be called and business transacted thereat in accordance with section ninety-five of this article.

(b) Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision five of section fifty of the public buildings law.

Formerly § 93, added L.1976, c. 511, § 1; amended L.1977, c. 368, § 1; renumbered 98, L.1977, c. 933, § 2.

§ 99. Public notice

1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting.

2. Public notice of the time and place of every other meeting shall be given, to the extent practicable, to the news media and shall be conspicuously posted in one or more designated public locations at a reasonable time prior thereto.

3. The public notice provided for by this section shall not be construed to require publication as a legal notice.

Formerly § 94, added L.1976, c. 511, § 1; renumbered 99, L.1977, c. 933 § 2; amended L.1979, c. 704, § 2.

§ 100. Conduct of executive sessions

1. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys:

a. matters which will imperil the public safety if disclosed;

b. any matter which may disclose the identity of a law enforcement agent or informer;

c. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;

d. discussions regarding proposed, pending or current litigation;

e. collective negotiations pursuant to article fourteen of the civil service law;

f. the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;

g. the preparation, grading or administration of examinations; and

h. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

2. Attendance at an executive session shall be permitted to any member of the public body and any other persons authorized by the public body.

Formerly § 95, added L.1976, c. 511, § 1; renumbered 100, L.1977, c. 933, § 2; amended L.1979, c. 704, § 3.

§ 101. Minutes

1. Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.

2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the freedom of information law as added by article six of this chapter.

3. Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meeting except that minutes taken pursuant to subdivision two hereof shall be available to the public within one week from the date of the executive session.

Formerly § 96, added L.1976, c. 511, § 1; renumbered 101, L.1977, c. 933, § 2; amended L.1979, c. 704, § 4.

§ 102. Enforcement

1. Any aggrieved person shall have standing to enforce the provisions of this article against a public body by the commencement of a proceeding pursuant to article seventy-eight of the civil practice law and rules, and/or an action for declaratory judgment and injunctive relief. In any such action or proceeding, the court shall have the power, in its discretion, upon good cause shown, to declare any action or part thereof taken in violation of this article void in whole or in part.

An unintentional failure to fully comply with the notice provisions required by this article shall not alone be grounds for invalidating any action taken at a meeting of a public body. The provisions of this article shall not affect the validity of the authorization, acquisition, execution or disposition of a bond issue or notes.

2. In any proceeding brought pursuant to this section, costs and reasonable attorney fees may be awarded by the court, in its discretion, to the successful party.

3. The statute of limitations in an article seventy-eight proceeding with respect to an action taken at executive session shall commence to run from the date the minutes of such executive session have been made available to the public.

Formerly § 97, added L.1976, c. 511, § 1; renumbered 102, L.1977, c. 933, § 2.

§ 103. Exemptions

Nothing contained in this article shall be construed as extending the provisions hereof to:

1. judicial or quasi-judicial proceedings, except proceedings of the public service commission;

2. deliberations of political committees, conferences and caucuses; and

3. any matter made confidential by federal or state law.

Formerly § 98, added L.1976, c. 511, § 1; amended L.1977, c. 532, § 1; renumbered 103, L.1977, c. 933, § 2.

Note: Section 104 pertains to public records only.

§ 105. Construction with other laws

1. Any provision of a charter, administrative code, local law, ordinance, or rule or regulation affecting a public body which is more restrictive with respect to public access than this article shall be deemed superseded hereby to the extent that such provision is more restrictive than this article.

2. Any provision of general, special or local law or charter, administrative code, ordinance, or rule or regulation less restrictive with respect to public access than this article shall not be deemed superseded hereby.

3. Notwithstanding any provision of this article to the contrary, a public body may adopt provisions less restrictive with respect to public access than this article.

Formerly § 100, added L.1976, c. 511, § 1; renumbered 105, L.1977, c. 933, § 2.

§ 106. Severability

If any provision of this article or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of the article or the application thereof to other persons and circumstances.

Formerly § 101, added L.1976, c. 511, § 1; renumbered 106, L.1977, c. 933, § 2.

APPENDIX VIII - Rhode Island, Gen. Laws of., sec. 42-46-1 through 42-46-10. Effective in 1979-80 in this form.

# OPEN MEETINGS


| SECTION. | | SECTION. | |
|---|---|---|---|
| 42-46-1. | Public policy. | 42-46-6. | Notice. |
| 42-46-2. | Definitions. | 42-46-7. | Minutes. |
| 42-46-3. | Open meetings. | 42-46-8. | Enforcement. |
| 42-46-4. | Closed meetings. | 42-46-9. | Other applicable law. |
| 42-46-5. | Exceptions. | 42-46-10. | Severability. |


**42-46-1. Public policy.** — It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.

**History of Section.**
G.L., § 42-46-1, as enacted by P.L. 1976, ch. 330, § 2.

**42-46-2. Definitions.** — As used in this chapter: (a) "Meeting" means the convening of a public body to formally discuss and act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.

(b) "Public body" means any department, agency, commission, committee, board or council or any subdivision thereof of the executive or legislative branch of state or municipal government. For purposes of this section, any political party, organization or unit thereof meeting or convening for any purpose, is not and should not be considered to be a public body.

(c) "Quorum" unless otherwise defined by applicable law, means a simple majority of the membership of a public body.

(d) "Open call" means a public announcement by the chairperson of the committee that the meeting is going to be held in executive session and the chairperson must indicate which exception of § 42-46-5 is being involved.

**42-46-3. Open meetings.** — Every meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5 of this chapter.

**42-46-4. Closed meetings.** — By open call, a public body may hold a meeting closed to the public upon an affirmative vote of the majority of its members. A meeting closed to the public shall be limited to matters allowed to be exempted from discussion at open meetings by § 42-46-5 of this chapter. The vote of each member on the question of holding a meeting closed to the public and the reason for holding such a meeting, by a citation to a subsection of § 42-46-6 of this chapter, shall be recorded and entered into the minutes of the meeting.

Rhode Island (cont'd)

42-46-5. **Exceptions.** — (a) A public body may hold a meeting closed to the public pursuant to § 42-46-4 of this chapter for one or more of the following purposes:

(1) Any discussions of the job performance, character, physical or mental health of a person or persons provided that such person or persons affected may require that such discussion be held at an open meeting.

(2) Sessions pertaining to collective bargaining or litigation, or work sessions pertaining to the same;

(3) Discussion regarding the matter of security including but not limited to the deployment of security personnel or devices.

(4) Any investigative proceedings regarding allegations of misconduct either civil or criminal;

(5) Any discussions or considerations related to the acquisition or lease of real property for public purposes, or of the disposition of public held property wherein advanced public information would be detrimental to the interest of the public.

(6) Any discussions related to or concerning a prospective business or industry locating in the state of Rhode Island when an open meeting would have a detrimental effect on the interest of the public.

(7) A matter related to the question of the investment of public funds where the premature disclosure would adversely affect the public interest. Public funds shall include any investment plan or matter related thereto, including but not limited to state lottery plans for new promotions.

(b) No meeting of members of a public body or use of electronic communication shall be used to circumvent the spirit or requirements of this chapter, provided, however, such meetings and discussions are not prohibited.

(c) This chapter shall not apply to judicial proceedings, or proceedings reasonably related thereto.

(d) This chapter shall not prohibit the removal of any person who wilfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

42-46-6. **Notice.** — (a) All public bodies shall give written notice of their regular scheduled meetings at the beginning of each calendar year. The notice shall include the dates, times, and places of such meetings.

(b) Public bodies shall give such supplemental written public notice of any regular or rescheduled meeting within a minimum of twenty-four (24) hours before the date.

(c) Written public notice shall include, but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting, or if no such office exists, at the building in which the meeting is to be held, and in at least one other prominent place within the governmental unit; provided, however, that nothing contained herein shall prevent a public body from holding an emergency meeting, upon an affirmative vote of the majority of the members of said body when said meeting is deemed necessary where the public welfare so requires. Nothing contained herein shall be used in the circumvention of the spirit and requirements of this chapter.

**42-46-7. Minutes.** — (a) All public bodies shall keep written minutes of all their meetings. Such minutes shall include, but need not be limited to: (1) the date, time and place of the meeting; (2) the members of the public body recorded as either present or absent; (3) a record by individual members of any vote taken; and (4) any other information relevant to the business of the public body that any member of the public body requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting except where such disclosure would be inconsistent with §§ 42-46-4 and 42-46-5.

**42-46-8. Remedies available to aggrieved persons.** — Any citizen of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint in the superior court against the public body seeking injunctive relief or judicial review(,) of any decisions made by the public which is allegedly in violation of this chapter and in the event the court determines that the action of the public body was in violation of this chapter it may in its discretion declare said action null and void, but no complaint may be filed after thirty (30) days from the date of the alleged violation.

**42-46-9. Other applicable law.** — The provisions of this chapter shall be in addition to any and all other conditions or provisions of applicable law and are not to be construed to be in amendment of or in repeal of any other applicable provision of law, except § 16-2-29 which has been expressly repealed.

**42-46-10. Severability.** — If any provision of this chapter, or the application of this chapter to any particular meeting or type of meeting is held invalid or unconstitutional, such decision shall not affect the validity of the remaining provisions or the other applications of this chapter.

APPENDIX IX - West Virginia Code chapter 6, sec. 9a-1 through 9a-7
Effective 1979-80 in this form

# OPEN GOVERNMENTAL PROCEEDINGS.

Sec.
6-9A-1. Declaration of legislative policy.
6-9A-2. Definitions.
6-9A-3. Proceedings to be open; public notice of meetings.
6-9A-4. Exceptions.
6-9A-5. Minutes.
6-9A-6. Enforcement by injunction; actions in violation of article voidable.
6-9A-7. Violation of article; penalties.

## § 6-9A-1. Declaration of legislative policy.

The legislature hereby finds and declares that public agencies, boards, commissions, governing bodies, councils and all other public bodies in this State exist for the singular purpose of representing citizens of this State in governmental affairs, and it is, therefore, in the best interests of the people of this State for all proceedings or all public bodies to be conducted in an open and public manner. The legislature hereby further finds and declares that the citizens of this State do not yield their sovereignty to the governmental agencies which serve them. The people in delegating authority do not give their public servants the right to decide what is good for them to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government created by them. (1975, c. 177.)

## § 6-9A-2. Definitions.

As used in this article:

(1) "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order, ordinance or measure on which a vote of the governing body is required at any meeting at which a quorum is present;

(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to the public;

(3) "Governing body" means the members of any public body having the authority to make decisions for or recommendations to a public body on policy or administration, the membership of which governing body consists of two or more members;

(4) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter, but such term does not include (a) any meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or court of claims proceeding, (b) any on-site inspection of any project or program, or (c) any political party caucus;

(5) "Political subdivision" means any county, county board of education or municipality in or any other political subdivision of this State;

(6) "Public body" means any executive, legislative or administrative body or agency of this State or any political subdivision, or any commission, board, council, bureau, committee or subcommittee or any other agency of any of the foregoing, and such term shall not be construed to include the judicial branch of government, state or local; and

(7) "Quorum" means, unless otherwise defined by applicable law, a simple majority of the constituent membership of a governing body. (1975, c. 177; 1978, c. 85.)

## § 6-9A-3. Proceedings to be open; public notice of meetings.

Except as expressly and specifically otherwise provided by law, whether heretofore or hereinafter enacted, and except as provided in section four [§ 6-9A-4] of this article, all meetings of any governing body shall be open to the public. Any governing body may make and enforce reasonable rules and regulations for attendance at any meeting where there is not room enough for all members of the public who wish to attend, and this article shall not be construed to prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised.

Each governing body shall promulgate rules by which the time and place of all regularly scheduled meetings and the time, place and purpose of all special meetings are made available, in advance, to the public and news media, except in the event of an emergency requiring immediate official action. (1975, c. 177; 1978, c. 85.)

## § 6-9A-4. Exceptions.

No provision of this article shall be construed to prevent the governing body of a public body from holding an executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under this article for the holding of such executive session and has presented it to the governing body and to the general public, but no decision shall be made in such executive session.

An executive session may be held only upon a majority affirmative vote of the members present of the governing body of a public body as defined in this article for the following:

(1) Matters of war, threatened attack from a foreign power, civil insurrection or riot; or

(2) The appointment, employment, retirement, promotion, demotion, disciplining, resignation, discharge, dismissal or compensation of any public officer or employee, or other personnel matters, or for the purpose of conducting a hearing on a complaint against a public officer or employee, unless such public officer or employee requests an open meeting; or

(3) The disciplining, suspension or expulsion of any student in any public school or public college or university, unless such student requests an open meeting; or

(4) The issuance, effecting, denial, suspension or revocation of a license, certificate or registration under the laws of this State or any political subdivision, unless the person seeking such license, certificate or registration or whose license, certificate or registration was denied, suspended or revoked requests an open meeting; or

(5) The physical or mental health of any person, unless such person requests an open meeting; or

(6) Matters which, if discussed in public, would be likely to affect adversely the reputation of any person; or

(7) Any official investigation or matters relating to crime prevention or law enforcement; or

(8) The development of security personnel or devices; or

(9) Matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving competition which, if made public, might adversely affect the financial or other interest of the State or any political subdivision. (1975, c. 177; 1978, c. 85.)

### § 6-9A-5. Minutes.

Each governing body shall provide for the preparation of written minutes of all of its meetings. All such minutes shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

(1) The date, time and place of the meeting;

(2) The name of each member of the governing body present and absent;

(3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and

(4) The results of all votes and, upon the request of a member, the vote of each member, by name.

Minutes of executive sessions may be limited to material the disclosure of which is not inconsistent with the provisions of section four [§ 6-9A-4] of this article. (1975, c. 177; 1978, c. 85.)

### § 6-9A-6. Enforcement by injunction; actions in violation of article voidable.

The circuit court in the county where the public body regularly meets or the judge thereof in vacation shall have jurisdiction to issue an injunction to enforce the purposes of this section upon petition by any citizen of this State who can show a good faith and valid reason for making such application. No bond shall be required unless such petition appears to be without merit or made with the sole intent of harassing or delaying or avoiding return by the governing body.

Any actions taken or decisions made in violation of this article may be voidable upon petition filed within thirty days after such actions or decisions to the aforesaid circuit court or the judge thereof in vacation and such court may order that such actions taken or decision made be performed in compliance with the provisions of this article. (1975, c. 177; 1978, c. 85.)

### § 6-9A-7. Violation of article; penalties.

Any person who is a member of a public or governmental body required to conduct open meetings in compliance with the provisions of this article and who willfully and knowingly violates the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail not more than ten days, or both fined and imprisoned. (1978, c. 85.)

# REFERENCES


1. 5 U.S.S. 552a

2. 5 U.S.C. 552b

3. 5 U.S.C. 552c

4. Henrick, William Randolph, "Public Inspection of State and Municipal Documents," 45 Fordham Law Review 1105.

5. Adams, Dr. John B., "State Open Meetings Laws: An Overview," Columbia, Mo.: The Freedom of Information Foundation, no.3, 1974.

6. ibid., 1-2

7. Higginbotham, Robert, "The Case Law of Open Meetings Laws," Columbia, Mo.: The Freedom of Information Center, University of Missouri, no. 354, 1976.

8. See, for instance: Clarke, Jack, "Open Meeting Laws: An Analysis," Columbia, Mo.: The Freedom of Information Center, no. 338, 1975; Kelly, Margie, "Public Records and Public Meetings," FoI Center, no. 397; Thompson, William N., "Attitudes Toward Open Meetings," FoI Center, no. 358.

9. Adams, op. cit. 2-3

10. ibid., 14-15

11. ibid., 4

12. ibid., 1. However, note that this report of passage of a New York Open Meeting Law on May 29, 1974 is incorrect. On that date New York enacted a Freedom of Information Law (governing only public records, not public meetings). The state's Open Meeting Law was not enacted until two years later.

13. Higginbotham, loc. cit.

14. An excellent summary of case law on open meetings appears in "Validity, Construction and Application of Statutes Making Public Proceedings Open to the Public," 38 ALR3d 1070.

15. Legal research methods were selected for the instant study in preference to the survey methodology employed by Adams because the survey method has disadvantages for legal research. When one sends out questionnaires, the responses are limited to the respondents' knowledge, which may be limited in matters of law. In Adams' study, that limitation produced several omissions. For instance, California was assigned a score of only seven when the correct score should have been nine, apparently (cont'd)

because the California respondent was unaware of the Grunsky-Burton Open Meeting Act (Cal. Gov. Code sec. 9027-9032), which mandates open meetings of the legislature and legislative committees. Similarly, the respondents in several of the low-rated states included in this study failed to report portions of their states' open meeting laws, as is detailed in the results of this study.

16. Keefe, Pat, "State Open Meetings Activity," Columbia, Mo.: Freedom of Information Center, University of Missouri, no. 378.

17. See, for instance: Student Bar Assn. Board of Governors etc. v. Byrd, 239 SE2d 415 (1977); People ex rel Cooper v. Carlson, 328 NE2d 75; Henderson v. Board of Education, 78 Cal.App.3d 875 (1978); McLarty v. Board of Regents, 231 Ga.22.

18. See, for instance: Gillies v. Schmidt, 556 P2d 82; Woodcock v. Calabrese, 372 A2d 1178 (1977); Judge v. Pocius, 367 A2d 788.

19. See, for instance: Arizona Press Club v. Board of Tax Appeals, 558 P2d 697 (1976); but see Canney v. Board of Public Instruction, 278 So2d 260 (contra).

20. See, for instance: Sacramento Newspaper Guild v. Sacramento County Board of Supervisors, 263 Cal.App.2d 41; Fiscal Court of Jefferson County v. (Louisville) Courier-Journal and Times Co., 554 SW2d 72 (1977); Minneapolis Star and Tribune Co. v. Housing and Redevelopment Authority, 246 NW2d 448; Oklahoma Assn. of Municipal Attorneys v. State, 577 P2d 1380.

21. See, for instance: Laman v. McCord, 432 SW2d 753; Board of Public Instruction v. Doran, 224 So2d 693.

22. Established in Conn. Gen.Stat. 1-21(j)

23. Conn. Gen.Stat. 1-18(a)(c)

24. See Adams' footnote C, p.30. Where Adams' respondents reported the fact, he counted Constitutional provisions requiring legislative openness toward a state's score. However, many states that did not receive such credit also had Constitutional requirements of open legislative sessions, including six of the nine states of special interest in this study.

25. Del. Code 7 -5109

26. Del. Code 29-10001 to 10005

27. Del. Constitution Art.II, Sec.11

28. Hawaii Rev.Stat. sec. 92-1 to 92-5

29. Hawaii Rev.Stat. sec. 92-1 to 92-13

30. Hawaii Atty.Gen.Op. 75-11

31. Hawaii Rev.Stat. sec. 21-10

32. Ind. Stat. 5-14-1-1 to 5-14-1-6.

33. Ind. Constitution Art. IV Sec. 13

34. Ind. Stat. 5-14-1.5-1 to 5-14-1.5-7

35. Adams,op.cit. 5

36. Md. Code 25 sec. 5

37. Md. Code 23a sec. 8

38. Md. Constitution Art. III Sec. 21

39. Md. Code 76a sec. 7 to 15 (statewide statute); Md. Code 76a sec. 16 to 31 (St. Mary's County statute)

40. Keefe,op. cit. 6

41. Md. Code 76a sec. 11(a)(13)

42. Miss. Code sec. 25-41-1 to 25-41-15

43. Miss. Constitution Art. IV Sec. 58

44. Adams,loc.cit

45. ibid.,1.

46. See, for instance: New York Educ. Law sec. 1708; New York Town Law sec. 267

47. New York Constitution Art. III, Sec. 10

48. New York Publ. Officers Law sec. 84-90

49. New York Publ. Officers Law sec. 95-106

50. Adams op.cit.5

51. Gen. Laws of R.I. sec. 16-2-9

52. Gen. Laws of R.I. sec. 42-46-1 to 42-46-10

53. Gen. Laws of R.I. sec. 42-46-5(b)

54. WVa. Code 6-9a-1 to 6-9a-7